NATIONAL ASSOCIATION OF REALTORS®

2023 MANUAL

CODE OF ETHICS & ARBITRATION

Code of Ethics and Arbitration Manual

A Manual for use by Member Boards of the National Association to ensure due process in the conduct of hearings to enforce the Code of Ethics and in the arbitration of business disputes arising out of the real estate business. Professional standards procedures of Member Boards must reflect substantively the approved due process policies and procedures of this Manual in order to ensure Board entitlement to coverage by the Professional Liability Insurance Policy of the National Association in litigation involving the Board in connection with Board enforcement of the Code of Ethics, provided that such policies and procedures are consistent with applicable state law.

For ease of reference, all amended provisions where content has changed are shaded to highlight additions.

NOTE: All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor. Case Interpretations approved by the Professional Standards Committee through 2022 are expected to be published on nar.realtor no later than January 2023.

NATIONAL ASSOCIATION OF REALTORS®
430 North Michigan Avenue
Chicago, Illinois 60611-4087

This Manual is dedicated to the memory of

Chesley J. ("Chet") Smith

(1921–2001)

Chet Smith served America in war and peace for nearly four decades in the Army Air Corps and the U.S. Air Force, and he served REALTORS® for nearly a quarter century at the local, state, and national levels. His dedication to the REALTOR® organization was exceeded only by his dedication to his family, his faith in God, and his commitment to the Code of Ethics.

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NOTE: To find any word or topic, go to www.nar.realtor and search the *Code of Ethics and Arbitration Manual* electronically for fast and comprehensive results.

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Areas of the *Code of Ethics and Arbitration Manual* Requiring Board/Association Action

Associations interested in adopting a citation policy and a citation schedule of potential violations and specific fines and/or education that apply to those violations should view the National Association's Model Citation Policy found at:
https://www.nar.realtor/about-nar/policies/
nar-model-citation-policy-and-schedule-of-fines

Associations interested in adopting an optional "fast track" process for receipt, consideration, and resolution of ethics complaints may view an online supplement to the *Code of Ethics and Arbitration Manual* at: https://www.nar.realtor/about-nar/policies fast-track-supplement-to-ceam

The following provisions of the Manual are referenced to assist Boards and Associations in adapting the Manual to conform to local policy and comply with state law. Throughout the Manual, the following symbol appears to assist Boards and Associations in quickly identifying those provisions:

Fill in the name of the Board or Association in:
Section 1(b) and 26(b), *Definitions*
Section 13(b), *Power to Take Disciplinary Action*
Section 46, *Duty to Arbitrate Before the State Association*
Section 56, *Enforcement*

Fill in the name of the Board or Association and decide if the Hearing Panel chair or the Professional Standards Committee chair will rule on postponement requests in:

Part Five and Part Twelve
Conduct of an Ethics Hearing with related procedures and outlines
Conduct of an Arbitration Hearing with related procedures and outlines

Part Six and Part Thirteen
Specimen Forms

Part Fourteen
State Association Professional Standards Committee, Ethics and Arbitration Proceedings
Duty to Arbitrate Before State Association

Statements of Professional Standards Policy
#3. *Circumstances under which arbitration is contingent upon the REALTOR®'s voluntary participation*. Establish whether voluntary arbitration will or will not be provided as a service. Also, see Section 44, *Duty and Privilege to Arbitrate*, specifying whether voluntary arbitration will be provided in (4), (5), and (6).

#25. *Expenses related to conduct of hearings by multi-board or regional grievance committee or professional standards committee*. Specify how expenses of hearings shall be shared by the signatory Boards.

NOTE: The new and continuous member education criteria referenced in Professional Standards Policy Statements #47 and #48, and the criteria for staff administration training referenced in Professional Standards Policy Statement #49, can be found on www.nar.realtor. Educational materials to conduct the new member and continuous member training can also be found on www.nar.realtor.

Also, Forms #E-19 and #A-19, Sample Format of Agreement Between ________ and ________ Boards of REALTORS® . . .

Part Fourteen, *State Association Professional Standards Committee,* Expenses of Hearings Conducted by State Association.

Part Eleven, *Interboard Arbitration Procedures,* Costs of Arbitration.

#33. *Use of panels in place of board of directors*. Specify what matters, if any, will be considered by panels of Directors and the composition of such panels. Also decide whether core Grievance Committee functions will be delegated to a panel of the Association's Professional Standards Committee, eliminating the need for a standing Grievance Committee. Also, see Section 13(b), *Power to Take Disciplinary Action;* Section 19(c), *Appeals from the Decision of the Grievance Committee Related to an Ethics Complaint;* Section 42(c), *Appeals from the Decision of Grievance Committee Related to a Request for Arbitration;* Section 20(c) and (d), *Initiating an Ethics Hearing;* Section 23, *Action of the Board of Directors;* Sections 24 and 49, *Initial Action by Directors;* Sections 25 and 50, *Preliminary Judicial Determination Prior to Imposition of Discipline;* Section 45, *Board's Right to Decline Arbitration;* Section 47(c), *Manner of Invoking Arbitration;* Section 55, *Request for Procedural Review by Directors;* **Part Fourteen,** *State Association Professional Standards Committee, Composition of Hearing Panels and Appellate or Review Panels*.

Part One and Part Seven: General Provisions
Sections 6 and 31, *Conduct of Hearing*. Clarify whether the parties may or may not record the proceeding if your association does not use a court reporter. If your association does use a court reporter, the association must allow parties to record the proceeding.

Part Two and Part Eight: Membership Duties and Their Enforcement
Sections 15 and 38, *Grievance Committee,* and Sections 16 and 39, *Professional Standards Committee*. Specify the number of members on each committee and how the chairpersons will be selected.

#45. *Publishing the names of Code of Ethics violators*. Determine whether the board will or will not publish violators' names and if names will be published what option the Association chooses.

Information about alternative enforcement procedures (e.g., use of hearing officers, ombudsmen, and mediation of ethics complaints) which may be adopted locally can be found on www.nar.realtor.

Part Three and Part Nine: The Grievance Committee
Sections 17 and 40, *Authority*. Specify how many members will serve on the committee and how the chairperson will be selected.

Also determine if panels of the grievance committee will be used.

Part Four: The Ethics Hearing
Section 6, *Conduct of Hearing,* first paragraph. Determine association's policy with respect to swearing and/or affirming testimony.

Section 14, last paragraph, *Discipline*. Board of Directors to determine in advance the Board's policy concerning if, and under what circumstances, an administrative processing fee will be imposed. Also determine amount.

Section 20(f–q), *Initiating an Ethics Hearing*. Determine if the optional provisions in subsections f–q will be adopted.

Section 21(e), *Ethics Hearing,* and Section 51(b), *Arbitration Hearing*. Specify when the respective Hearing Panels will be provided with ethics complaints and arbitration requests.

Section 22(a), *Decision of Hearing Panel*. Determine if ethics decisions presented to the Directors for ratification will or will not include the names of the parties.

Section 23(b) and (m), *Action of the Board of Directors*. Decide if panels will act on behalf of your Board of Directors.

Section 23(c), *Action of the Board of Directors*. Establish the amount of appeal deposit, if any, and decide if panels will act on behalf of the Board of Directors.

Section 23(n), *Action of the Board of Directors*. Determine if names will be published if respondent violates the Code of Ethics twice within three years.

Part Ten: Arbitration of Disputes
Section 31, *Conduct of Hearing,* first paragraph. Determine association's policy with respect to swearing and/or affirming testimony.

Section 47(a–c), *Manner of Invoking Arbitration*, and Section 48(a) and (b), *Submission to Arbitration*. Specify the amount of deposit; the number of days the Grievance Committee has to review a request; and select one of the three options regarding signed agreements and deposits.

Section 54, *Cost of Arbitration*. Determine if the arbitration filing fee of the prevailing party is to be returned and, if there is a split award, if the parties may receive a portion of their deposits back as determined by the arbitrators.

Also determine whether the association will refund all or part of parties' arbitration filing deposits if the dispute is resolved through mediation.

Decide if the association will provide parties with an opportunity to settle immediately prior to executive session and, if so, if the parties settle what portion, if any, of their arbitration filing fees will be returned.

Section 55(a), *Request for Procedural Review by Directors*. Determine whether the Board will require a deposit to file a procedural review request and, if so, what the amount of the deposit will be.

Section 55(c), *Request for Procedural Review by Directors*. Determine if the procedural review will be heard by the full Board of Directors or a subset thereof.

Appendix I to Part Ten, *Arbitrable Issues*.
Determine what, if any, non-arbitrable disputes may be mediated.

Appendix VI to Part Ten, *Mediation as a Service of Member Boards*.

Determine whether the Board will require REALTORS® (principals) to mediate otherwise arbitratable disputes pursuant to Article 17. Requiring REALTORS® to mediate otherwise arbitratable disputes requires establishment of an affirmative obligation in the Board's governing documents. Enabling model bylaw provisions can be found at www.nar.realtor (see Model Bylaws).

Also decide if the Board will offer disputing parties an opportunity to mediate prior to an arbitration request being filed.

Part Eleven: Interboard Arbitration Procedures
Establish a filing fee for interboard arbitration. Establish the number of days after the Hearing Panel is formed that the Secretary must send a copy of the arbitration request to the respondent. Clarify whether a party may or may not tape record the proceeding.

Part Five and Part Twelve: Conduct of an Ethics or Arbitration Hearing
Decide if the Hearing Panel Chair or the Professional Standards Committee Chair rules on postponement requests.

Clarify whether a party may or may not record the proceeding.

Part Six and Part Thirteen: Specimen Forms
Form #E-4, **Grievance Committee Request for Information (Ethics Complaint).** Specify the number of days a respondent has to submit a response and the number of copies required (should be consistent with Section 21(a), *Ethics Hearing*).

Form #A-1, **Request and Agreement to Arbitrate,** and Form #A-2, **Request and Agreement to Arbitrate (Nonmember).** Specify the amount of the arbitration deposit (should be consistent with Section 47(a), *Manner of Invoking Arbitration,* and Section 48(a), *Submission to Arbitration*).

Form #A-5, **Grievance Committee Request for Information (Arbitration Request).** Specify the number of days the respondent has to submit a response.

Form #E-2, **Notice to Respondent (Ethics)** and Form #A-3, **Notice to Respondent (Arbitration).** Specify the number of copies that must be submitted.

Form #E-3, **Reply (Ethics);** Form #E-5, **Response to Grievance Committee Request for Information;** and Form #E-8, **Official Notice of Hearing (Ethics).** Board of Directors to determine in advance the Board's policy concerning if, and under what circumstances, an administrative processing fee will be imposed. Also determine amount. Should be consistent with Section 14, last paragraph, *Discipline*.

Form #A-4, **Response and Agreement to Arbitrate.** Specify the amount of the filing fee (should be consistent with Section 47(a), *Manner of Invoking Arbitration,* and Section 48(a), *Submission to Arbitration*).

Form #E-9, **Outline of Procedure for Ethics Hearing** and Form #A-10, **Outline of Procedure for Arbitration Hearing.** Clarify whether the parties may or may not record the proceeding.

Form #E-13, **Request for Appeal (Ethics).** Specify the amount of the filing fee, if any (should be consistent with Section 23(c), *Action of the Board of Directors*).

Form #A-13, **Request for Procedural Review (Arbitration).** Specify the amount of the filing fee, if any (should be consistent with Section 55, *Request for Procedural Review by Directors*).

Form #E-14, **Official Notice of Appeal Hearing (Ethics)** and Form #A-14, **Official Notice of Procedural Review (Arbitration).** Specify the number of days' notice required if counsel is to be present (should be consistent with Sections 4 and 29, *Right of Counsel to Appear*) and the number of days required to challenge the qualifications of an appeal panel (should be consistent with Sections 2(f) and 27(f), *Qualification for Tribunal*).

Form #E-19 and Form #A-19, **Sample Format to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures.** Clarify on refusals to arbitrate what tribunal will hear allegation. Also, clarify on appeals of the Grievance Committee's dismissal of an ethics complaint or arbitration request (or challenges to the classification of arbitration requests) what tribunal will hear matter. Also clarify which Board(s) will be responsible for administering the process.

The REALTOR®'s Code of Ethics — A Gift of Vision

(The following article by William D. North, former Executive Vice President and General Counsel, first appeared in the August 1978 edition of *The Executive Officer*.)

The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® represents one of those rare creations of man — a living document; a document which somehow preserves its significance, relevance and usefulness despite the passing of years and the changing of the times.

The Code is an unusual Gift of Vision: the vision of those who dreamed that the business of real estate could become a profession, the vision of those who believed that the search for the highest and best use of the land required the highest and best measures of professional responsibility, and the vision of those who recognized private ownership of the land as indispensable to political democracy and a free and prosperous citizenry.

It is this Gift of Vision which has enabled the Code to survive half a century of unprecedented social, political, economic, and legal change substantially unchanged.

The creators and keepers of the Code have realized that to remain relevant and useful, the Code must be a great deal more than simply a set of rules for the conduct of real estate transactions. To endure, the Code must be a criterion of excellence while at the same time constituting a realistic standard of performance. It must be a guide to measure professional conduct, while at the same time representing the furthest reach of professional aspiration. The Code must remain constant without becoming absolute, must be enforceable without being oppressive, and must be meaningful without being dogmatic.

The Code of Ethics has been able to meet all these needs and reconcile all these objectives for one reason only— the vision of its creators in adopting as the unifying rationale of the Code the Concept of Service to the Public.

Every Article of the Code is premised on this single concept. This single concept provides the philosophical basis by which each Article must be interpreted and applied. This single concept, by which the various Articles of the Code are rationalized, is the reason the Code has been and is a "living document." "Service to the Public" is the "end" and the Code is the "means" to that end.

Origins of the Code

In today's world, preoccupied as it is with social responsibility and oriented as it is to consumer concerns, it is hard to visualize how truly revolutionary the Code of Ethics was when it was adopted in 1913.

The history of the real estate business for the preceding 150 years was a history of rampant land speculation, exploitation, and disorder. It was an era before the adoption of state regulatory licensing systems. It was a time when real estate agents, if they were licensed at all, were licensed as "peddlers".

It was the era of the fraudulent subdivision, the fake city addition, the multiple "first" mortgage, the "net" listing, and a myriad of other "get rich quick" schemes involving the sale of land. It was the era of "caveat emptor" and the Robber Barons whose motto was not "Let the Public Be Served" but rather "Let the Public Be Damned."

This was the era which produced the Code of Ethics of the National Association. With the exception of a now defunct association of printers, the REALTORS® were the first business group outside the "learned professions of medicine, engineering, and law" to adopt a Code of Ethics. It was an uncommon event with uncommon men and women making an uncommon commitment to business integrity and fair dealing.

It was not a commitment coerced by threat of government sanction but a commitment predicated on a need perceived by REALTORS® themselves. It was not a commitment mandated by the marketplace because it involved the voluntary acceptance of liabilities and responsibilities, duties and costs, limitations and obligations, which the public did not even perceive as their due. It was, in sum, a commitment to the concept of service to the public as an article of faith in professionalism.

Significance of the Code

The significance of the Code rests not merely in the guidance it provides those who subscribe to it, but also in the guidance it has provided the National Association in its growth and development. From the very beginning, the Code has provided the impetus for Association involvement in education of REALTORS® to support [the Preamble] and [Article] 11; in the protection of private property ownership to support [the Preamble]; in the creation and administration of multiple listing and other cooperative arrangements to support Articles [5] and [3]; in the arbitration of disputes to support Article [17]; in the protection of the consumer to support Articles [1] and [2].

The Code has been significant not merely in its impact on the focus of Association programs and activities, but also in its impact on Association organization and structure. Thus, the local Board of REALTORS® is an indispensable constituent of the REALTOR® family in large measure because it represents an effective forum for the enforcement of the Code. From this function, too, proceeds the need for Board jurisdictions and the structure of the State Association. Perhaps, more than anything else, the Code has provided the interdependent relationship which binds the National Association, its Member Boards, State Associations, and Institutes, Societies, and Councils into a single working constituency.

The Code and the Law

The Code of Ethics is never opposed to the law. The Code, in its application or implementation, must always be construed harmoniously and consistently with the law.

But the Code is not the law. It is supported not by the coercive power of the state but by the principles of contract. Acceptance of REALTOR® membership creates a form of "professional compact," the terms of which the Code defines. No matter how similar the mandates of the Code may be to the dictates of the license laws and other legislation, the difference between them is fundamental and unavoidable.

The relation of the Code to the law is two-fold. First, the Code defines those duties and obligations required in the public interest which are beyond the capacity or power of the law to mandate, and second, the Code supports the law by requiring a higher sensitivity to the duties and obligations which it imposes.

In the performance of its first role, the Code is concerned with identifying the extensions of professionalism to serve the public's evolving needs. In the performance of its other role, the Code is concerned with the refinement and specific application of legal principles to real estate transactions.

When the Code was first adopted, there were no statutory definitions of the professional responsibilities necessary to protect and serve the public. That such definitions exist today in state license laws is in large measure the result of the Code. Thus, as government came to recognize that the professional duties and obligations assumed by REALTORS® voluntarily under the Code truly served the public interest, it then conditioned licensure on the licensee's acceptance to protect the whole public and not merely those served by REALTORS®.

While the task of identifying the extensions of professionalism continues, certainly in recent years, with the general licensure of the profession, the role of the Code is sensitizing REALTORS® to the full implications and applications of their legal obligations has become increasingly important. It is this role which has involved the Code so intimately with such legal doctrines as implied warranty, agency and fiduciary duty and equal opportunity.

Because the Code is a living document and real estate is a dynamic business and profession, the law need never be its substitute. So long as the aspiration to better serve the public remains the underlying concept of the Code it must evolve and grow in significance and importance consonant with but independent of the law.

The Code and Its Use

There is no idea which cannot be misapplied; no faith which cannot be exploited; no concept which cannot be abused; and no principle which cannot be perverted. For this reason, the integrity of the Code and the value of its vision of the real estate industry depends ultimately upon its use.

If it is applied inconsistently, it becomes arbitrary and hence oppressive. If it is applied without understanding, it becomes unreasonable and hence dogmatic. If it is used in ignorance, it becomes meaningless; if it is used inappropriately, it becomes irrelevant; and if it is used without moderation, it becomes irrational.

No Code of Ethics can long survive its misuse or misapplication. This is why the REALTORS® Code of Ethics must be applied with continuing and conscientious concern for procedural due process. Procedural due process is both an explicit and implied requirement of the Code. It is required explicitly by Article [14], which requires a "proper tribunal" and implicitly by the Preamble's reliance on the Golden Rule. The due process requirement, after all, requires nothing more than a fair and diligent search for the truth—with an opportunity for all facts to be gathered; all views to be heard; all defenses to be raised and all prejudice or bias to be expunged. But while due process requires nothing more than a fair and diligent search for the truth, so the Code may be properly applied, due process permits "nothing less." There is no acceptable level of unfairness, no permissible slight of the search.

Conclusion

In its Code of Ethics the family of REALTORS® has been offered a farsighted vision of the profession as it could be and should be. This vision, however, must not be blurred by myopic applications of the Code for shortsighted gains at the expense of farsighted objectives. A REALTOR® who serves the public serves himself by guaranteeing his future.

But neither must this vision, however clear, obscure the fact that the goals of the Code must be reached step by step, following the path of due process rather than the line of least resistance.

To REALTORS®, the Code of Ethics offers the lessons of hindsight, the guidance of foresight, and the understanding of insight—A Rare Gift of Vision.

Pathways to Professionalism

These professional courtesies are intended to be used by REALTORS® on a voluntary basis, and cannot form the basis for a professional standards complaint.

Respect for the Public

1. Follow the "Golden Rule"—Do unto others as you would have them do unto you.
2. Respond promptly to inquiries and requests for information.
3. Schedule appointments and showings as far in advance as possible.
4. Call if you are delayed or must cancel an appointment or showing.
5. If a prospective buyer decides not to view an occupied home, promptly explain the situation to the listing broker or the occupant.
6. Communicate with all parties in a timely fashion.
7. When entering a property, ensure that unexpected situations, such as pets, are handled appropriately.
8. Leave your business card if not prohibited by local rules.
9. Never criticize property in the presence of the occupant.
10. Inform occupants that you are leaving after showings.
11. When showing an occupied home, always ring the doorbell or knock—and announce yourself loudly—before entering. Knock and announce yourself loudly before entering any closed room.
12. Present a professional appearance at all times; dress appropriately and drive a clean car.
13. If occupants are home during showings, ask their permission before using the telephone or bathroom.
14. Encourage the clients of other brokers to direct questions to their agent or representative.
15. Communicate clearly; don't use jargon or slang that may not be readily understood.
16. Be aware of and respect cultural differences.
17. Show courtesy and respect to everyone.
18. Be aware of—and meet—all deadlines.
19. Promise only what you can deliver—and keep your promises.
20. Identify your REALTOR® and your professional status in contacts with the public.
21. Do not tell people what you think—tell them what you know.

Respect for Property

1. Be responsible for everyone you allow to enter listed property.
2. Never allow buyers to enter listed property unaccompanied.
3. When showing property, keep all members of the group together.
4. Never allow unaccompanied access to property without permission.
5. Enter property only with permission even if you have a lockbox key or combination.
6. When the occupant is absent, leave the property as you found it (lights, heating, cooling, drapes, etc.). If you think something is amiss (e.g., vandalism) contact the listing broker immediately.
7. Be considerate of the seller's property. Do not allow anyone to eat, drink, smoke, dispose of trash, use bathing or sleeping facilities, or bring pets. Leave the house as you found it unless instructed otherwise.
8. Use sidewalks; if weather is bad, take off shoes and boots inside property.
9. Respect sellers' instructions about photographing or videographing their properties' interiors or exteriors.

Respect for Peers

1. Identify your REALTOR® and professional status in all contacts with other REALTORS®.
2. Respond to other agents' calls, faxes, and e-mails promptly and courteously.
3. Be aware that large electronic files with attachments or lengthy faxes may be a burden on recipients.
4. Notify the listing broker if there appears to be inaccurate information on the listing.
5. Share important information about a property, including the presence of pets, security systems, and whether sellers will be present during the showing.
6. Show courtesy, trust, and respect to other real estate professionals.
7. Avoid the inappropriate use of endearments or other denigrating language.
8. Do not prospect at other REALTORS®' open houses or similar events.
9. Return keys promptly.
10. Carefully replace keys in the lockbox after showings.
11. To be successful in the business, mutual respect is essential.
12. Real estate is a reputation business. What you do today may affect your reputation—and business—for years to come.

(Revised 11/13)

Preface

The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®

The NATIONAL ASSOCIATION OF REALTORS® was formed in 1908 and was called The National Association of Real Estate Exchanges. The Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS® was first adopted on July 29, 1913, at the sixth Annual Convention of the National Association of Real Estate Exchanges (Association's name changed in 1916 to National Association of Real Estate Boards and again in 1974 to NATIONAL ASSOCIATION OF REALTORS®). The Code was first adopted as "Rules of Conduct" to be recommended to real estate boards for voluntary adoption. Compliance with the Code was made a condition of membership in the National Association in 1924, and has remained so to date.

The *Bylaws* of the National Association, Article IV, Code of Ethics and Member Board Business Practices, state:

> ***Section 1.*** *Each Member Board shall adopt the Code of Ethics of the National Association as a part of its governing regulations for violation of which disciplinary action may be taken.*
>
> *Adoption of the Code of Ethics includes responsibility for providing applicant/new member Code of Ethics orientation and ongoing member ethics training that satisfies the learning objectives and minimum criteria established by the National Association from time to time.*
>
> ***Section 2.*** *Any Member Board which shall neglect or refuse to maintain and enforce the Code of Ethics with respect to the business activities of its members may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association. Enforcement of the Code of Ethics also requires Member Boards to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances involving real estate related activities and transactions where there is reason to believe the public trust may have been violated. The "public trust", as used in this context, refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. Enforcement of the Code of Ethics also requires Member Boards to provide mediation and arbitration services to members and their clients so that the dispute resolution requirements of Article 17 of the Code of Ethics can be met.* (Revised 1/21)
>
> *Enforcement of the Code of Ethics also includes responsibility for ensuring that persons primarily responsible for administration of enforcement procedures have successfully completed training that meets the learning objectives and minimum criteria established by the National Association from time to time.*
>
> *Enforcement of the Code of Ethics also prohibits Member Boards from knowingly granting REALTOR® or REALTOR ASSOCIATE® membership to any applicant who has an unfulfilled sanction pending which was imposed by another Board or Association of REALTORS® for violation of the Code of Ethics.*

The charter revocation procedures that may be invoked should an allegation be made that a Board has failed to enforce the Code of Ethics may be found on www.nar.realtor and in Appendix VIII to **Part Four,** The Ethics Hearing, of this Manual.

The establishment of a Code of Ethics recognizing high standards of business practice and professional conduct by real estate practitioners was a primary reason for the establishment of the National Association in 1908. Men of integrity wanted to ensure honorable, faithful, and competent service to clients, customers, and other members of the public. They believed that through their collective efforts the ends of national policy and the general welfare could be served. The history of their early meetings clearly reflects the desire to avoid careless "horseback" or uninformed advice to those who relied upon them and to avoid the use of special knowledge to prey upon the unsuspecting and unsophisticated. They sought to make the broker recognize the truly fiduciary relationship the broker has with the client and to assure service of a professional quality in all respects. They had an awareness, too, that a voluntary commitment to peer review by knowledgeable, informed men and women sharing the same commitment had immeasurable advantages over resort to courts of law and equity. Most of all, they recognized that self-discipline in the interest of protecting the public was not inconsistent with the preservation of a competitive marketplace.

Author Pearl Janet Davies in her *History of Real Estate in America* records that Edward S. Judd, 1912 President of the National Association, in accepting the presidency, "asked for a formal commitment by the voting body to a specific, written Code of Ethics. Himself a lawyer, he described the projected Code as 'similar to that of the American Bar Association' then recently approved and adopted by many local Bar Associations. 'A Committee on the Code of Ethics,' he announced, 'is expected to report at the next Convention for adoption and recommendation to all local Boards a definite Code of Ethics, a Code which shall be as the Ten Commandments to the real estate fraternity.'" Author Davies notes that the following year, on July 29, 1913, it was Judd who put the motion for the Code. "The motion," he said, "is for the adoption of the Rules of Conduct and that a recommendation be sent to the local Boards that they be adopted as much as possible; and they be taken as the Code of Ethics of the National Association, and their adoption recommended everywhere as far as possible." The motion was carried by voice vote amidst applause. A delegate rose to say, "We have heard many important things here, but nothing else is so important as the adoption of this resolution." Thus, according to Pearl Davies, "The national real estate organization may claim to be the second trade or business group in the United States to follow examples of the professions of medicine, law, and engineering in formulating a Code of Ethics."

The first paragraph of that historic code for real estate practice, adopted in 1913, established the tone for the 23 separate ethical precepts which followed and for all subsequent versions of the Code. It read: "The real estate agent should be absolutely honest, truthful, faithful, and efficient. He should bear in mind that he is an employee — that his client is his employer and is entitled to the best service the real estate man can give — his information, talent, time, services, loyalty, confidence, and fidelity."

The Code of Ethics of the National Association has survived as a viable and relevant guide because it is a living document. As times have changed, new needs and insights have been recognized and, as the law has developed, the Code has been amended. It has been amended approximately 53 times since its adoption. The amendments all have reflected an interest in refining, on a continuing basis, the principles obligating REALTORS® and REALTOR ASSOCIATE®s to the highest and best standards of personal and professional conduct in their practice of real estate. Such amendments have sought to simplify, clarify, and amplify the ethical principles established to preclude antisocial business practices and to accommodate current legal, cultural, and national perspectives.

The Code of Ethics and Standards of Practice were amended in 1914, 1915, 1924, 1928, 1950, 1952, 1955, 1956, 1961, 1962, 1974, 1975, 1976, 1977, 1980, 1982, 1984, 1985, 1986, 1987, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2015, 2017, 2018, 2019, 2020, 2021, and 2022. The Standards of Practice were first adopted in 1975; before then, there were only Articles. The Standards of Practice were printed separately from the Articles from 1975 through 1984, all Articles appearing first and all Standards of Practice following. It wasn't until 1985 that the Standards of Practice and Articles were integrated with the relevant Standards of Practice following each Article.

With all the amendments, however, the philosophical premise of the Code has remained unchanged and is reflected in the Preamble. That premise is that the interest of the nation and its citizens ". . . impose obligations [upon the REALTOR®] beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor. The term REALTORS® has come to connote competency, fairness, and high integrity in business relations. No inducement of profit and no instruction from clients can ever justify departure from this ideal."

In keeping with this philosophical premise, REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®.

Any Code of Ethics is meaningless unless it can be clearly understood by those who must live by it. To interpret and support the Code, the Professional Standards Committee of the National Association has adopted Standards of Practice which are "interpretations" of the Code. Such Standards of Practice are applications of ethical principles to specific conduct in specific circumstances as related to one or more Articles of the Code of Ethics.

To assist with the proper application of the Code of Ethics and Standards of Practice, approximately 152 different numbered case interpretations are set forth comprehensively in this publication.

The numbered Case Interpretations are of particular significance. These cases are intended to be used much like decisions in judicial proceedings. That is, they are specific and factual situations involving charges of alleged unethical conduct by REALTORS® and/or REALTOR ASSOCIATE®s and provide insight into the proper form of complaint, the procedures of a Board of REALTORS® in processing the complaint to ensure due process, and the rationale of the peer judgment rendered in each case. These cases do not detail the specific sanction imposed. This is because any sanction must always fit the offense and must involve every consideration of justice, equity, and propriety. Because of this, a wide range of sanctions are available to vindicate violations of the Code. Such sanctions include:

(a) Letter of Warning with copy to be placed in member's file;
(b) Letter of Reprimand with copy to be placed in member's file;
(c) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend, taking into consideration cost, location, and duration;
(d) Appropriate and reasonable fine not to exceed $15,000 *(Amended 5/13)*;
(e) Membership of individual suspended for a stated period not less than thirty (30) days nor more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements). The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Board, within such time as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed $15,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension

without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated; (*Amended 11/13*)

(f) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); (*Amended 4/96*)

(g) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; (*Amended 5/02*)

(h) REALTORS® who are not members of a Board from which they purchase the multiple listing service and their users and subscribers remain obligated under the Code of Ethics on the same terms and conditions as REALTOR® and REALTOR ASSOCIATE® members of that Board. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on that Board's members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. (*Amended 4/96*)

(i) Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g. suspension or termination of membership) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. *(Adopted 05/14)*

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. *(Revised 05/14)*

In addition to any discipline imposed, Boards and Associations may, at their discretion, impose administrative processing fees not to exceed $500 against respondents found in violation of the Code of Ethics or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed. Boards and Associations shall determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine. (*Revised 5/13*)

Acceptance of a Code of Ethics by the membership depends on its fair, reasonable, and impartial enforcement. Strict attention must be given to the requirements of due process. Acceptance of the Code must never involve a sacrifice of the right to counsel or of any other procedural safeguard. Consistent with this concept, the National Association has required each Member Board to establish a standing Professional Standards Committee and to establish appropriate Professional Standards procedures in its governing documents. The Association provides and recommends to Member Boards the adoption of the *Code of Ethics and Arbitration Manual* of the National Association, as reviewed and adapted by local legal counsel to conform to and comply with local law.

The *Code of Ethics and Arbitration Manual* contains approved provisions relating to enforcement of the Code of Ethics and arbitration of business disputes for inclusion in the bylaws of local Boards of REALTORS®. For ease of reference, the Manual contains separate sections covering ***Ethics*** and ***Arbitration.***

Material covered in these sections includes:

- **Part One — Ethics General Provisions** and **Part Seven— Arbitration General Provisions** contain such things as definitions of terms, qualification for tribunal, and so forth.

- **Part Two** and **Part Eight, Membership Duties and Their Enforcement** describe, among other things, the duties of membership, power to take disciplinary action, the nature of discipline, and the establishment of Board Grievance Committees and Professional Standards Committees.

- **Part Three** and **Part Nine, The Grievance Committee** describe the authority and appropriate function of the Grievance Committee in reviewing ethics complaints and arbitration requests.

- **Part Four—The Ethics Hearing** explains the method of handling an ethics complaint from the time of original receipt through proper processing and hearing to final action by the Board in respect of the complaint.

- **Part Ten — Arbitration of Disputes** deals with the arbitration of business disputes between REALTORS® associated with different firms arising out of their relationship as REALTORS®, and with arbitration of certain other disputes subject to prescribed conditions explained in Section 44 of **Part Ten.** If this Manual is not adopted, the Board is nevertheless required to have local legal counsel review procedures as adopted and certify that this review assures the Board's procedures accord due process and are consistent with the requirements of applicable law. (Further, as noted on the title page of this Manual, professional standards procedures of Member Boards must reflect substantively the approved due process policies and procedures of this Manual in order to ensure Board entitlement to coverage by the Professional Liability Insurance Policy of the National Association in litigation involving the Board in connection with Board enforcement of the Code of Ethics, provided that such policies and procedures are consistent with applicable state law.)

- **Part Fourteen — State Association Professional Standards Committee** describes the function, jurisdiction, and responsibilities of the State Association Professional Standards Committee as to Code enforcement, including arbitration of contractual, and specific non-contractual, disputes under certain specified circumstances.

- **Part Eleven — Interboard Arbitration** tells how interboard arbitration may be handled.

- **Part Five** and **Part Twelve — Conduct of an Ethics or Arbitration Hearing** provide a detailed procedural guide for the conduct of an Ethics or Arbitration Hearing.

- **Part Six** and **Part Thirteen — Specimen Forms** provide forms (or, more accurately, "formats") which are recommended to Boards for their use in the processing of ethics complaints and arbitration requests.

Since the adoption of the Code of Ethics of the National Association in 1913, thousands of disciplinary hearings and arbitration hearings have been conducted by REALTORS® in the interest of protecting the public. The objective of such hearings in each case was to promote honesty, integrity, fairness, and competency, and to resolve controversies on the basis of the informed judgment of one's peers. The hearings have provided justice that has been both timely and economic. They have relieved overburdened civil courts and yet have resolved charges against REALTORS® effectively and without the distortion and injury to reputation that so often attends litigation. In January 1982, Chief Justice Warren Burger of the U.S. Supreme Court strongly endorsed arbitration as an alternative to litigation to resolve controversies. This basic principle has been followed by REALTORS® and REALTOR ASSOCIATE®s of America for many years.

Article 14 of the Code of Ethics obligates REALTORS® and REALTOR ASSOCIATE®s to place all pertinent facts before the proper tribunal of the Member Board or any institute, society, or council of which they are members if they are charged with unethical practice or are asked to present evidence in any disciplinary proceeding or investigation. The REALTOR® or REALTOR ASSOCIATE® is expected to abide by the decision of the Board as rendered, once all appeal remedies have been exhausted. If a member refuses to accept a disciplinary decision after appeal, even then, before imposing the sanctions of suspension or expulsion, the Board will, if there remains any doubt as to the legal propriety of the judgment, make such sanctions effective only upon entry of final judgment in a court of competent jurisdiction in a suit by the Board for declaratory judgment declaring that the suspension or expulsion violates no rights of the member.

As a viable, living, developing guide for REALTORS®, the Code will continue to provide the protection the public deserves and requires. The NATIONAL ASSOCIATION OF REALTORS® and the respective State Associations and Member Boards of REALTORS® are committed and pledged to such protection.

Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®

Effective January 1, 2023

Where the word REALTORS® is used in this Code and Preamble, it shall be deemed to include REALTOR ASSOCIATE®s.

While the Code of Ethics establishes obligations that may be higher than those mandated by law, in any instance where the Code of Ethics and the law conflict, the obligations of the law must take precedence.

Preamble

Under all is the land. Upon its wise utilization and widely allocated ownership depend the survival and growth of free institutions and of our civilization. REALTORS® should recognize that the interests of the nation and its citizens require the highest and best use of the land and the widest distribution of land ownership. They require the creation of adequate housing, the building of functioning cities, the development of productive industries and farms, and the preservation of a healthful environment.

Such interests impose obligations beyond those of ordinary commerce. They impose grave social responsibility and a patriotic duty to which REALTORS® should dedicate themselves, and for which they should be diligent in preparing themselves. REALTORS®, therefore, are zealous to maintain and improve the standards of their calling and share with their fellow REALTORS® a common responsibility for its integrity and honor.

In recognition and appreciation of their obligations to clients, customers, the public, and each other, REALTORS® continuously strive to become and remain informed on issues affecting real estate and, as knowledgeable professionals, they willingly share the fruit of their experience and study with others. They identify and take steps, through enforcement of this Code of Ethics and by assisting appropriate regulatory bodies, to eliminate practices which may damage the public or which might discredit or bring dishonor to the real estate profession. REALTORS® having direct personal knowledge of conduct that may violate the Code of Ethics involving misappropriation of client or customer funds or property, willful discrimination, or fraud resulting in substantial economic harm, bring such matters to the attention of the appropriate Board or Association of REALTORS®. *(Amended 1/00)*

Realizing that cooperation with other real estate professionals promotes the best interests of those who utilize their services, REALTORS® urge exclusive representation of clients; do not attempt to gain any unfair advantage over their competitors; and they refrain from making unsolicited comments about other practitioners. In instances where their opinion is sought, or where REALTORS® believe that comment is necessary, their opinion is offered in an objective, professional manner, uninfluenced by any personal motivation or potential advantage or gain.

The term REALTOR® has come to connote competency, fairness, and high integrity resulting from adherence to a lofty ideal of moral conduct in business relations. No inducement of profit and no instruction from clients ever can justify departure from this ideal.

In the interpretation of this obligation, REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, "Whatsoever ye would that others should do to you, do ye even so to them."

Accepting this standard as their own, REALTORS® pledge to observe its spirit in all of their activities whether conducted personally, through associates or others, or via technological means, and to conduct their business in accordance with the tenets set forth below. *(Amended 1/07)*

Duties to Clients and Customers

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their client. This obligation to the client is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, REALTORS® remain obligated to treat all parties honestly. *(Amended 1/01)*

- **Standard of Practice 1-1**

  REALTORS®, when acting as principals in a real estate transaction, remain obligated by the duties imposed by the Code of Ethics. *(Amended 1/93)*

- **Standard of Practice 1-2**

  The duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.

  The duties the Code of Ethics imposes are applicable whether REALTORS® are acting as agents or in legally recognized non-agency capacities except that any duty imposed exclusively on agents by law or regulation shall not be imposed by this Code of Ethics on REALTORS® acting in non-agency capacities.

  As used in this Code of Ethics, "client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship; "customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm; "prospect" means a purchaser, seller, tenant, or landlord who is not subject to a representation relationship with the REALTOR® or

REALTOR®'s firm; "agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation; and "broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 1/95, Amended 1/07)*

- **Standard of Practice 1-3**

REALTORS®, in attempting to secure a listing, shall not deliberately mislead the owner as to market value.

- **Standard of Practice 1-4**

REALTORS®, when seeking to become a buyer/tenant representative, shall not mislead buyers or tenants as to savings or other benefits that might be realized through use of the REALTOR®'s services. *(Amended 1/93)*

- **Standard of Practice 1-5**

REALTORS® may represent the seller/landlord and buyer/tenant in the same transaction only after full disclosure to and with informed consent of both parties. *(Adopted 1/93)*

- **Standard of Practice 1-6**

REALTORS® shall submit offers and counter-offers objectively and as quickly as possible. *(Adopted 1/93, Amended 1/95)*

- **Standard of Practice 1-7**

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. *(Amended 1/20)*

- **Standard of Practice 1-8**

REALTORS®, acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Upon the written request of the listing broker who submits a counter-offer to the buyer's/tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived the obligation to have the counter-offer presented. REALTORS®, acting as agents or brokers of buyers/tenants, shall recommend that buyers/tenants obtain the advice of legal counsel if there is a question as to whether a pre-existing contract has been terminated. *(Adopted 1/93, Amended 1/22)*

- **Standard of Practice 1-9**

The obligation of REALTORS® to preserve confidential information (as defined by state law) provided by their clients in the course of any agency relationship or non-agency relationship recognized by law continues after termination of agency relationships or any non-agency relationships recognized by law. REALTORS® shall not knowingly, during or following the termination of professional relationships with their clients:

1) reveal confidential information of clients; or
2) use confidential information of clients to the disadvantage of clients; or
3) use confidential information of clients for the REALTOR®'s advantage or the advantage of third parties unless:
   a) clients consent after full disclosure; or
   b) REALTORS® are required by court order; or
   c) it is the intention of a client to commit a crime and the information is necessary to prevent the crime; or
   d) it is necessary to defend a REALTOR® or the REALTOR®'s employees or associates against an accusation of wrongful conduct.

Information concerning latent material defects is not considered confidential information under this Code of Ethics. *(Adopted 1/93, Amended 1/01)*

- **Standard of Practice 1-10**

REALTORS® shall, consistent with the terms and conditions of their real estate licensure and their property management agreement, competently manage the property of clients with due regard for the rights, safety and health of tenants and others lawfully on the premises. *(Adopted 1/95, Amended 1/00)*

- **Standard of Practice 1-11**

REALTORS® who are employed to maintain or manage a client's property shall exercise due diligence and make reasonable efforts to protect it against reasonably foreseeable contingencies and losses. *(Adopted 1/95)*

- **Standard of Practice 1-12**

When entering into listing contracts, REALTORS® must advise sellers/landlords of:

1) the REALTOR®'s company policies regarding cooperation and the amount(s) of any compensation that will be offered to subagents, buyer/tenant agents, and/or brokers acting in legally recognized non-agency capacities;
2) the fact that buyer/tenant agents or brokers, even if compensated by listing brokers, or by sellers/landlords may represent the interests of buyers/tenants; and
3) any potential for listing brokers to act as disclosed dual agents, e.g., buyer/tenant agents. *(Adopted 1/93, Renumbered 1/98, Amended 1/03)*

- **Standard of Practice 1-13**

When entering into buyer/tenant agreements, REALTORS® must advise potential clients of:

1) the REALTOR®'s company policies regarding cooperation;
2) the amount of compensation to be paid by the client;
3) the potential for additional or offsetting compensation from other brokers, from the seller or landlord, or from other parties;
4) any potential for the buyer/tenant representative to act as a disclosed dual agent, e.g., listing broker, subagent, landlord's agent, etc.; and
5) the possibility that sellers or sellers' representatives may not treat the existence, terms, or conditions of offers as confidential unless confidentiality is required by law, regulation, or by any confidentiality agreement between the parties. *(Adopted 1/93, Renumbered 1/98, Amended 1/06)*

- **Standard of Practice 1-14**
  Fees for preparing appraisals or other valuations shall not be contingent upon the amount of the appraisal or valuation. *(Adopted 1/02)*

- **Standard of Practice 1-15**
  REALTORS®, in response to inquiries from buyers or cooperating brokers shall, with the sellers' approval, disclose the existence of offers on the property. Where disclosure is authorized, REALTORS® shall also disclose, if asked, whether offers were obtained by the listing licensee, another licensee in the listing firm, or by a cooperating broker. *(Adopted 1/03, Amended 1/09)*

- **Standard of Practice 1-16**
  REALTORS® shall not access or use, or permit or enable others to access or use, listed or managed property on terms or conditions other than those authorized by the owner or seller. *(Adopted 1/12)*

Article 2

REALTORS® shall avoid exaggeration, misrepresentation, or concealment of pertinent facts relating to the property or the transaction. REALTORS® shall not, however, be obligated to discover latent defects in the property, to advise on matters outside the scope of their real estate license, or to disclose facts which are confidential under the scope of agency or non-agency relationships as defined by state law. *(Amended 1/00)*

- **Standard of Practice 2-1**
  REALTORS® shall only be obligated to discover and disclose adverse factors reasonably apparent to someone with expertise in those areas required by their real estate licensing authority. Article 2 does not impose upon the REALTOR® the obligation of expertise in other professional or technical disciplines. *(Amended 1/96)*

- **Standard of Practice 2-2**
  (Renumbered as Standard of Practice 1-12 1/98)

- **Standard of Practice 2-3**
  (Renumbered as Standard of Practice 1-13 1/98)

- **Standard of Practice 2-4**
  REALTORS® shall not be parties to the naming of a false consideration in any document, unless it be the naming of an obviously nominal consideration.

- **Standard of Practice 2-5**
  Factors defined as "non-material" by law or regulation or which are expressly referenced in law or regulation as not being subject to disclosure are considered not "pertinent" for purposes of Article 2. *(Adopted 1/93)*

Article 3

REALTORS® shall cooperate with other brokers except when cooperation is not in the client's best interest. The obligation to cooperate does not include the obligation to share commissions, fees, or to otherwise compensate another broker. *(Amended 1/95)*

- **Standard of Practice 3-1**
  REALTORS®, acting as exclusive agents or brokers of sellers/landlords, establish the terms and conditions of offers to cooperate. Unless expressly indicated in offers to cooperate, cooperating brokers may not assume that the offer of cooperation includes an offer of compensation. Terms of compensation, if any, shall be ascertained by cooperating brokers before beginning efforts to accept the offer of cooperation. *(Amended 1/99)*

- **Standard of Practice 3-2**
  Any change in compensation offered for cooperative services must be communicated to the other REALTOR® prior to the time that REALTOR® submits an offer to purchase/lease the property. After a REALTOR® has submitted an offer to purchase or lease property, the listing broker may not attempt to unilaterally modify the offered compensation with respect to that cooperative transaction. *(Amended 1/14)*

- **Standard of Practice 3-3**
  Standard of Practice 3-2 does not preclude the listing broker and cooperating broker from entering into an agreement to change cooperative compensation. *(Adopted 1/94)*

- **Standard of Practice 3-4**
  REALTORS®, acting as listing brokers, have an affirmative obligation to disclose the existence of dual or variable rate commission arrangements (i.e., listings where one amount of commission is payable if the listing broker's firm is the procuring cause of sale/lease and a different amount of commission is payable if the sale/lease results through the efforts of the seller/landlord or a cooperating broker). The listing broker shall, as soon as practical, disclose the existence of such arrangements to potential cooperating brokers and shall, in response to inquiries from cooperating brokers, disclose the differential that would result in a cooperative transaction or in a sale/lease that results through the efforts of the seller/landlord. If the cooperating broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client before the client makes an offer to purchase or lease. *(Amended 1/02)*

- **Standard of Practice 3-5**
  It is the obligation of subagents to promptly disclose all pertinent facts to the principal's agent prior to as well as after a purchase or lease agreement is executed. *(Amended 1/93)*

- **Standard of Practice 3-6**
  REALTORS® shall disclose the existence of accepted offers, including offers with unresolved contingencies, to any broker seeking cooperation. *(Adopted 5/86, Amended 1/04)*

- **Standard of Practice 3-7**
  When seeking information from another REALTOR® concerning property under a management or listing agreement, REALTORS® shall disclose their REALTOR® status and whether their interest is personal or on behalf of a client and, if on behalf of a client, their relationship with the client. *(Amended 1/11)*

- **Standard of Practice 3-8**
  REALTORS® shall not misrepresent the availability of access to show or inspect a listed property. *(Amended 11/87)*

- **Standard of Practice 3-9**
  REALTORS® shall not provide access to listed property on terms other than those established by the owner or the seller. *(Adopted 1/10, Amended 1/23)*

- **Standard of Practice 3-10**
  The duty to cooperate established in Article 3 relates to the obligation to share information on listed property, and to make property available to other brokers for showing to prospective purchasers/tenants when it is in the best interests of sellers/landlords. *(Adopted 1/11)*

- **Standard of Practice 3-11**
  REALTORS® may not refuse to cooperate on the basis of a broker's race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/20, Amended 1/23)*

Article 4
REALTORS® shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, REALTORS® shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative. *(Amended 1/00)*

- **Standard of Practice 4-1**
  For the protection of all parties, the disclosures required by Article 4 shall be in writing and provided by REALTORS® prior to the signing of any contract. *(Adopted 2/86)*

Article 5
REALTORS® shall not undertake to provide professional services concerning a property or its value where they have a present or contemplated interest unless such interest is specifically disclosed to all affected parties.

Article 6
REALTORS® shall not accept any commission, rebate, or profit on expenditures made for their client, without the client's knowledge and consent.

When recommending real estate products or services (e.g., homeowner's insurance, warranty programs, mortgage financing, title insurance, etc.), REALTORS® shall disclose to the client or customer to whom the recommendation is made any financial benefits or fees, other than real estate referral fees, the REALTOR® or REALTOR®'s firm may receive as a direct result of such recommendation. *(Amended 1/99)*

- **Standard of Practice 6-1**
  REALTORS® shall not recommend or suggest to a client or a customer the use of services of another organization or business entity in which they have a direct interest without disclosing such interest at the time of the recommendation or suggestion. *(Amended 5/88)*

Article 7
In a transaction, REALTORS® shall not accept compensation from more than one party, even if permitted by law, without disclosure to all parties and the informed consent of the REALTOR®'s client or clients. *(Amended 1/93)*

Article 8
REALTORS® shall keep in a special account in an appropriate financial institution, separated from their own funds, monies coming into their possession in trust for other persons, such as escrows, trust funds, clients' monies, and other like items.

Article 9
REALTORS®, for the protection of all parties, shall assure whenever possible that all agreements related to real estate transactions including, but not limited to, listing and representation agreements, purchase contracts, and leases are in writing in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party to such agreements upon their signing or initialing. *(Amended 1/04)*

- **Standard of Practice 9-1**
  For the protection of all parties, REALTORS® shall use reasonable care to ensure that documents pertaining to the purchase, sale, or lease of real estate are kept current through the use of written extensions or amendments. *(Amended 1/93)*

- **Standard of Practice 9-2**
  When assisting or enabling a client or customer in establishing a contractual relationship (e.g., listing and representation agreements, purchase agreements, leases, etc.) electronically, REALTORS® shall make reasonable efforts to explain the nature and disclose the specific terms of the contractual relationship being established prior to it being agreed to by a contracting party. *(Adopted 1/07)*

Duties to the Public

Article 10
REALTORS® shall not deny equal professional services to any person for reasons of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. REALTORS® shall not be parties to any plan or agreement to discriminate

against a person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/23)*

REALTORS®, in their real estate employment practices, shall not discriminate against any person or persons on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Amended 1/23)*

- **Standard of Practice 10-1**
  When involved in the sale or lease of a residence, REALTORS® shall not volunteer information regarding the racial, religious or ethnic composition of any neighborhood nor shall they engage in any activity which may result in panic selling, however, REALTORS® may provide other demographic information. *(Adopted 1/94, Amended 1/06)*

- **Standard of Practice 10-2**
  When not involved in the sale or lease of a residence, REALTORS® may provide demographic information related to a property, transaction or professional assignment to a party if such demographic information is (a) deemed by the REALTOR® to be needed to assist with or complete, in a manner consistent with Article 10, a real estate transaction or professional assignment and (b) is obtained or derived from a recognized, reliable, independent, and impartial source. The source of such information and any additions, deletions, modifications, interpretations, or other changes shall be disclosed in reasonable detail. *(Adopted 1/05, Renumbered 1/06)*

- **Standard of Practice 10-3**
  REALTORS® shall not print, display or circulate any statement or advertisement with respect to selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Adopted 1/94, Renumbered 1/05 and 1/06, Amended 1/14 and 1/23)*

- **Standard of Practice 10-4**
  As used in Article 10 "real estate employment practices" relates to employees and independent contractors providing real estate-related services and the administrative and clerical staff directly supporting those individuals. *(Adopted 1/00, Renumbered 1/05 and 1/06)*

- **Standard of Practice 10-5**
  REALTORS® must not use harassing speech, hate speech, epithets, or slurs based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. *(Adopted and effective November 13, 2020, Amended 1/23)*

Article 11

The services which REALTORS® provide to their clients and customers shall conform to the standards of practice and competence which are reasonably expected in the specific real estate disciplines in which they engage; specifically, residential real estate brokerage, real property management, commercial and industrial real estate brokerage, land brokerage, real estate appraisal, real estate counseling, real estate syndication, real estate auction, and international real estate.

REALTORS® shall not undertake to provide specialized professional services concerning a type of property or service that is outside their field of competence unless they engage the assistance of one who is competent on such types of property or service, or unless the facts are fully disclosed to the client. Any persons engaged to provide such assistance shall be so identified to the client and their contribution to the assignment should be set forth. *(Amended 1/10)*

- **Standard of Practice 11-1**
  When REALTORS® prepare opinions of real property value or price they must:
  1) be knowledgeable about the type of property being valued,
  2) have access to the information and resources necessary to formulate an accurate opinion, and
  3) be familiar with the area where the subject property is located

  unless lack of any of these is disclosed to the party requesting the opinion in advance.

  When an opinion of value or price is prepared other than in pursuit of a listing or to assist a potential purchaser in formulating a purchase offer, the opinion shall include the following unless the party requesting the opinion requires a specific type of report or different data set:
  1) identification of the subject property
  2) date prepared
  3) defined value or price
  4) limiting conditions, including statements of purpose(s) and intended user(s)
  5) any present or contemplated interest, including the possibility of representing the seller/landlord or buyers/tenants
  6) basis for the opinion, including applicable market data
  7) if the opinion is not an appraisal, a statement to that effect
  8) disclosure of whether and when a physical inspection of the property's exterior was conducted
  9) disclosure of whether and when a physical inspection of the property's interior was conducted
  10) disclosure of whether the REALTOR® has any conflicts of interest *(Amended 1/14)*

- **Standard of Practice 11-2**
  The obligations of the Code of Ethics in respect of real estate disciplines other than appraisal shall be interpreted and applied in accordance with the standards of competence and practice which clients and the public reasonably require to protect their rights and interests considering the complexity of the transaction, the availability of expert assistance, and, where the REALTOR® is an agent or subagent, the obligations of a fiduciary. *(Adopted 1/95)*

• **Standard of Practice 11-3**
When REALTORS® provide consultive services to clients which involve advice or counsel for a fee (not a commission), such advice shall be rendered in an objective manner and the fee shall not be contingent on the substance of the advice or counsel given. If brokerage or transaction services are to be provided in addition to consultive services, a separate compensation may be paid with prior agreement between the client and REALTOR®. *(Adopted 1/96)*

• **Standard of Practice 11-4**
The competency required by Article 11 relates to services contracted for between REALTORS® and their clients or customers; the duties expressly imposed by the Code of Ethics; and the duties imposed by law or regulation. *(Adopted 1/02)*

Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. *(Amended 1/08)*

• **Standard of Practice 12-1**
REALTORS® must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the REALTOR® will receive no financial compensation from any source for those services. *(Amended 1/22)*

• **Standard of Practice 12-2**
(Deleted 1/20)

• **Standard of Practice 12-3**
The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the REALTOR® making the offer. However, REALTORS® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the REALTOR®'s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice. *(Amended 1/95)*

• **Standard of Practice 12-4**
REALTORS® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, REALTORS® shall not quote a price different from that agreed upon with the seller/landlord. *(Amended 1/93)*

• **Standard of Practice 12-5**
REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium (e.g., electronically, print, radio, television, etc.) without disclosing the name of that REALTOR®'s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures. *(Adopted 11/86, Amended 1/16)*

• **Standard of Practice 12-6**
REALTORS®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as REALTORS® or real estate licensees. *(Amended 1/93)*

• **Standard of Practice 12-7**
Only REALTORS® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have "sold" the property. Prior to closing, a cooperating broker may post a "sold" sign only with the consent of the listing broker. *(Amended 1/96)*

• **Standard of Practice 12-8**
The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on REALTORS®' websites. REALTORS® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a REALTOR®'s website is no longer current or accurate, REALTORS® shall promptly take corrective action. *(Adopted 1/07)*

• **Standard of Practice 12-9**
REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner. *(Adopted 1/07)*

• **Standard of Practice 12-10**
REALTORS®' obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
4) presenting content developed by others without either attribution or without permission; or
5) otherwise misleading consumers, including use of misleading images. *(Adopted 1/07, Amended 1/18)*

• **Standard of Practice 12-11**
REALTORS® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner. *(Adopted 1/07)*

• **Standard of Practice 12-12**
REALTORS® shall not:
1) use URLs or domain names that present less than a true picture, or
2) register URLs or domain names which, if used, would present less than a true picture. *(Adopted 1/08)*

• **Standard of Practice 12-13**
The obligation to present a true picture in advertising, marketing, and representations allows REALTORS® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled. *(Adopted 1/08)*

Article 13
REALTORS® shall not engage in activities that constitute the unauthorized practice of law and shall recommend that legal counsel be obtained when the interest of any party to the transaction requires it.

Article 14
If charged with unethical practice or asked to present evidence or to cooperate in any other way, in any professional standards proceeding or investigation, REALTORS® shall place all pertinent facts before the proper tribunals of the Member Board or affiliated institute, society, or council in which membership is held and shall take no action to disrupt or obstruct such processes. *(Amended 1/99)*

• **Standard of Practice 14-1**
REALTORS® shall not be subject to disciplinary proceedings in more than one Board of REALTORS® or affiliated institute, society, or council in which they hold membership with respect to alleged violations of the Code of Ethics relating to the same transaction or event. *(Amended 1/95)*

• **Standard of Practice 14-2**
REALTORS® shall not make any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with an ethics hearing or appeal or in connection with an arbitration hearing or procedural review. *(Amended 1/92)*

• **Standard of Practice 14-3**
REALTORS® shall not obstruct the Board's investigative or professional standards proceedings by instituting or threatening to institute actions for libel, slander, or defamation against any party to a professional standards proceeding or their witnesses based on the filing of an arbitration request, an ethics complaint, or testimony given before any tribunal. *(Adopted 11/87, Amended 1/99)*

• **Standard of Practice 14-4**
REALTORS® shall not intentionally impede the Board's investigative or disciplinary proceedings by filing multiple ethics complaints based on the same event or transaction. *(Adopted 11/88)*

Duties to REALTORS®

Article 15
REALTORS® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices. *(Amended 1/12)*

• **Standard of Practice 15-1**
REALTORS® shall not knowingly or recklessly file false or unfounded ethics complaints. *(Adopted 1/00)*

• **Standard of Practice 15-2**
The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to not knowingly or recklessly publish, repeat, retransmit, or republish false or misleading statements made by others. This duty applies whether false or misleading statements are repeated in person, in writing, by technological means (e.g., the Internet), or by any other means. *(Adopted 1/07, Amended 1/12)*

• **Standard of Practice 15-3**
The obligation to refrain from making false or misleading statements about other real estate professionals, their businesses, and their business practices includes the duty to publish a clarification about or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading. *(Adopted 1/10, Amended 1/12)*

Article 16
REALTORS® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other REALTORS® have with clients. *(Amended 1/04)*

• **Standard of Practice 16-1**
Article 16 is not intended to prohibit aggressive or innovative business practices which are otherwise ethical and does not prohibit disagreements with other REALTORS® involving commission, fees, compensation or other forms of payment or expenses. *(Adopted 1/93, Amended 1/95)*

• **Standard of Practice 16-2**
Article 16 does not preclude REALTORS® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another REALTOR®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession,

business, club, or organization, or other classification or group is deemed "general" for purposes of this standard. *(Amended 1/04)*

Article 16 is intended to recognize as unethical two basic types of solicitations:

First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another REALTOR® and

Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another REALTOR® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, "for sale" or "for rent" signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other REALTORS® under offers of subagency or cooperation. *(Amended 1/04)*

- **Standard of Practice 16-3**
  Article 16 does not preclude REALTORS® from contacting the client of another broker for the purpose of offering to provide, or entering into a contract to provide, a different type of real estate service unrelated to the type of service currently being provided (e.g., property management as opposed to brokerage) or from offering the same type of service for property not subject to other brokers' exclusive agreements. However, information received through a Multiple Listing Service or any other offer of cooperation may not be used to target clients of other REALTORS® to whom such offers to provide services may be made. *(Amended 1/04)*

- **Standard of Practice 16-4**
  REALTORS® shall not solicit a listing which is currently listed exclusively with another broker. However, if the listing broker, when asked by the REALTOR®, refuses to disclose the expiration date and nature of such listing, i.e., an exclusive right to sell, an exclusive agency, open listing, or other form of contractual agreement between the listing broker and the client, the REALTOR® may contact the owner to secure such information and may discuss the terms upon which the REALTOR® might take a future listing or, alternatively, may take a listing to become effective upon expiration of any existing exclusive listing. *(Amended 1/94)*

- **Standard of Practice 16-5**
  REALTORS® shall not solicit buyer/tenant agreements from buyers/tenants who are subject to exclusive buyer/tenant agreements. However, if asked by a REALTOR®, the broker refuses to disclose the expiration date of the exclusive buyer/tenant agreement, the REALTOR® may contact the buyer/tenant to secure such information and may discuss the terms upon which the REALTOR® might enter into a future buyer/tenant agreement or, alternatively, may enter into a buyer/tenant agreement to become effective upon the expiration of any existing exclusive buyer/tenant agreement. *(Adopted 1/94, Amended 1/98)*

- **Standard of Practice 16-6**
  When REALTORS® are contacted by the client of another REALTOR® regarding the creation of an exclusive relationship to provide the same type of service, and REALTORS® have not directly or indirectly initiated such discussions, they may discuss the terms upon which they might enter into a future agreement or, alternatively, may enter into an agreement which becomes effective upon expiration of any existing exclusive agreement. *(Amended 1/98)*

- **Standard of Practice 16-7**
  The fact that a prospect has retained a REALTOR® as an exclusive representative or exclusive broker in one or more past transactions does not preclude other REALTORS® from seeking such prospect's future business. *(Amended 1/04)*

- **Standard of Practice 16-8**
  The fact that an exclusive agreement has been entered into with a REALTOR® shall not preclude or inhibit any other REALTOR® from entering into a similar agreement after the expiration of the prior agreement. *(Amended 1/98)*

- **Standard of Practice 16-9**
  REALTORS®, prior to entering into a representation agreement, have an affirmative obligation to make reasonable efforts to determine whether the prospect is subject to a current, valid exclusive agreement to provide the same type of real estate service. *(Amended 1/04)*

- **Standard of Practice 16-10**
  REALTORS®, acting as buyer or tenant representatives or brokers, shall disclose that relationship to the seller/landlord's representative or broker at first contact and shall provide written confirmation of that disclosure to the seller/landlord's representative or broker not later than execution of a purchase agreement or lease. *(Amended 1/04)*

- **Standard of Practice 16-11**
  On unlisted property, REALTORS® acting as buyer/tenant representatives or brokers shall disclose that relationship to the seller/landlord at first contact for that buyer/tenant and shall provide written confirmation of such disclosure to the seller/landlord not later than execution of any purchase or lease agreement. *(Amended 1/04)*

  REALTORS® shall make any request for anticipated compensation from the seller/landlord at first contact. *(Amended 1/98)*

- **Standard of Practice 16-12**
  REALTORS®, acting as representatives or brokers of sellers/landlords or as subagents of listing brokers, shall disclose that relationship to buyers/tenants as soon as practicable and shall provide written confirmation of such disclosure to buyers/tenants not later than execution of any purchase or lease agreement. *(Amended 1/04)*

- **Standard of Practice 16-13**

  All dealings concerning property exclusively listed, or with buyer/tenants who are subject to an exclusive agreement shall be carried on with the client's representative or broker, and not with the client, except with the consent of the client's representative or broker or except where such dealings are initiated by the client.

  Before providing substantive services (such as writing a purchase offer or presenting a CMA) to prospects, REALTORS® shall ask prospects whether they are a party to any exclusive representation agreement. REALTORS® shall not knowingly provide substantive services concerning a prospective transaction to prospects who are parties to exclusive representation agreements, except with the consent of the prospects' exclusive representatives or at the direction of prospects. *(Adopted 1/93, Amended 1/04)*

- **Standard of Practice 16-14**

  REALTORS® are free to enter into contractual relationships or to negotiate with sellers/landlords, buyers/tenants or others who are not subject to an exclusive agreement but shall not knowingly obligate them to pay more than one commission except with their informed consent. *(Amended 1/98)*

- **Standard of Practice 16-15**

  In cooperative transactions REALTORS® shall compensate cooperating REALTORS® (principal brokers) and shall not compensate nor offer to compensate, directly or indirectly, any of the sales licensees employed by or affiliated with other REALTORS® without the prior express knowledge and consent of the cooperating broker.

- **Standard of Practice 16-16**

  REALTORS®, acting as subagents or buyer/tenant representatives or brokers, shall not use the terms of an offer to purchase/lease to attempt to modify the listing broker's offer of compensation to subagents or buyer/tenant representatives or brokers nor make the submission of an executed offer to purchase/lease contingent on the listing broker's agreement to modify the offer of compensation. *(Amended 1/04)*

- **Standard of Practice 16-17**

  REALTORS®, acting as subagents or as buyer/tenant representatives or brokers, shall not attempt to extend a listing broker's offer of cooperation and/or compensation to other brokers without the consent of the listing broker. *(Amended 1/04)*

- **Standard of Practice 16-18**

  REALTORS® shall not use information obtained from listing brokers through offers to cooperate made through multiple listing services or through other offers of cooperation to refer listing brokers' clients to other brokers or to create buyer/tenant relationships with listing brokers' clients, unless such use is authorized by listing brokers. *(Amended 1/02)*

- **Standard of Practice 16-19**

  Signs giving notice of property for sale, rent, lease, or exchange shall not be placed on property without consent of the seller/landlord. *(Amended 1/93)*

- **Standard of Practice 16-20**

  REALTORS®, prior to or after their relationship with their current firm is terminated, shall not induce clients of their current firm to cancel exclusive contractual agreements between the client and that firm. This does not preclude REALTORS® (principals) from establishing agreements with their associated licensees governing assignability of exclusive agreements. *(Adopted 1/98, Amended 1/10)*

Article 17

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. *(Amended 1/12)*

- **Standard of Practice 17-1**

  The filing of litigation and refusal to withdraw from it by REALTORS® in an arbitrable matter constitutes a refusal to arbitrate. *(Adopted 2/86)*

- **Standard of Practice 17-2**

  Article 17 does not require REALTORS® to mediate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to mediate through the Board's facilities. The fact that all parties decline to participate in mediation does not relieve REALTORS® of the duty to arbitrate.

  Article 17 does not require REALTORS® to arbitrate in those circumstances when all parties to the dispute advise the Board in writing that they choose not to arbitrate before the Board. *(Amended 1/12)*

- **Standard of Practice 17-3**

  REALTORS®, when acting solely as principals in a real estate transaction, are not obligated to arbitrate disputes with other REALTORS® absent a specific written agreement to the contrary. *(Adopted 1/96)*

- **Standard of Practice 17-4**

  Specific non-contractual disputes that are subject to arbitration pursuant to Article 17 are:

  1) Where a listing broker has compensated a cooperating broker and another cooperating broker subsequently claims to be the procuring cause of the sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*

  2) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. When arbitration occurs between two (or more) cooperating brokers and where the listing broker is not a party, the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the seller or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97, Amended 1/07)*

  3) Where a buyer or tenant representative is compensated by the buyer or tenant and, as a result, the listing broker reduces the commission owed by the seller or landlord and, subsequent to such actions, another cooperating broker claims to be the procuring cause of sale or lease. In such cases the complainant may name the first cooperating broker as respondent and arbitration may proceed without the listing broker being named as a respondent. Alternatively, if the complaint is brought against the listing broker, the listing broker may name the first cooperating broker as a third-party respondent. In either instance the decision of the hearing panel as to procuring cause shall be conclusive with respect to all current or subsequent claims of the parties for compensation arising out of the underlying cooperative transaction. *(Adopted 1/97)*

  4) Where two or more listing brokers claim entitlement to compensation pursuant to open listings with a seller or landlord who agrees to participate in arbitration (or who requests arbitration) and who agrees to be bound by the decision. In cases where one of the listing brokers has been compensated by the seller or landlord, the other listing broker, as complainant, may name the first listing broker as respondent and arbitration may proceed between the brokers. *(Adopted 1/97)*

  5) Where a buyer or tenant representative is compensated by the seller or landlord, and not by the listing broker, and the listing broker, as a result, reduces the commission owed by the seller or landlord and, subsequent to such actions, claims to be the procuring cause of sale or lease. In such cases arbitration shall be between the listing broker and the buyer or tenant representative and the amount in dispute is limited to the amount of the reduction of commission to which the listing broker agreed. *(Adopted 1/05)*

- **Standard of Practice 17-5**

  The obligation to arbitrate established in Article 17 includes disputes between REALTORS® (principals) in different states in instances where, absent an established inter-association arbitration agreement, the REALTOR® (principal) requesting arbitration agrees to submit to the jurisdiction of, travel to, participate in, and be bound by any resulting award rendered in arbitration conducted by the respondent(s) REALTOR®'s association, in instances where the respondent(s) REALTOR®'s association determines that an arbitrable issue exists. *(Adopted 1/07)*

Explanatory Notes

The reader should be aware of the following policies which have been approved by the Board of Directors of the National Association:

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge must read as an alleged violation of one or more Articles of the Code. Standards of Practice may be cited in support of the charge.

The Standards of Practice serve to clarify the ethical obligations imposed by the various Articles and supplement, and do not substitute for, the Case Interpretations in *Interpretations of the Code of Ethics*.

Modifications to existing Standards of Practice and additional new Standards of Practice are approved from time to time. Readers are cautioned to ensure that the most recent publications are utilized.

Introduction to the *Code of Ethics and Arbitration Manual*

The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR-ASSOCIATE®s may be judged. REALTORS® and REALTOR-ASSOCIATE®s in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR-ASSOCIATE®s throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers.

Each Board is responsible for enforcing the Code of Ethics pursuant to the Bylaws of the National Association. This duty must be discharged conscientiously and responsibly. Conscientious enforcement is essential if REALTORS® and REALTOR-ASSOCIATE®s are to be recognized as professionals subscribing to standards of business and ethical conduct higher than those required by law. This duty must be discharged responsibly because of the importance to REALTORS® and REALTOR-ASSOCIATE®s of their reputation and the esteem of their peers. *(Amended 4/96)*

Membership in a Board of REALTORS® has been recognized by the courts as a valuable property right. Therefore, any action by a Board limiting or denying the rights and privileges of a member must be justified, not only substantively but also procedurally. It is for this reason that failure to accord due process to a REALTOR® accused of a violation of the Code of Ethics can result in the reversal of the Board's decision by the civil courts and can expose the Board and its officers and members to liability for monetary damages and other penalties. Due process is not a difficult concept, but is an essential one. Due process means nothing more or less than the right to a full and fair hearing before an impartial tribunal with a full and complete knowledge of the charges made and with adequate opportunity to prepare a defense.

While the concept of due process is not difficult, its application to specific situations involving enforcement of the Code of Ethics can be troublesome. Therefore, before taking any disciplinary action which may lead to diminution of a member's rights or privileges, it is strongly recommended that the Board's attorney be consulted. Counsel will bring to the proceedings an informed and objective view of the controversy. Moreover, counsel can assure that the due process provided satisfies the requirements of local law. Procedures outlined in the *Code of Ethics and Arbitration Manual* will satisfy most requirements of due process, but the individual differences in the laws of each state will require interpretation and possible supplementation of local counsel.

In exercising its responsibility for the enforcement of the Code of Ethics, it is particularly important for the Board to distinguish between controversies which are properly the subject of arbitration and controversies involving the Code of Ethics. The Code of Ethics must not be used as a club or lever to settle business disputes between REALTORS®. For this reason, in complaints involving both charges of unethical conduct and request for arbitration, the dual complaint must be severed and arbitration heard prior to hearing any ethics charges.

A violation of the Code of Ethics involves an offense against the Board and its members generally, as distinguished from an arbitration hearing which involves a dispute among two or more members individually, arising from some common transaction involving the rendering of real estate services.* For this reason, it is never appropriate for a Board, in an ethics proceeding, to award money damages to another REALTOR®.

An ethics proceeding has two essential purposes: education and vindication. It is educational in that it raises the consciousness of members to the meaning and significance of the Code. Many ethics violations occur inadvertently or through ignorance, and the hearing proceeding serves as an effective educational tool.

In filing a charge of an alleged violation of the Code of Ethics by a REALTOR®, the charge shall read as an alleged violation of one or more Articles of the Code. A Standard of Practice may be cited only in support of the charge. The Preamble is aspirational. Articles 1 through 17 establish specific obligations for which REALTORS® may be disciplined.

The Board has wide latitude in the sanctions which may be applied for violations of the Code of Ethics. It must, however, act responsibly in the application of these sanctions, attempting always to make the punishment commensurate with the offense. Recommendations of Ethics Hearing Panels may range from a mild Letter of Warning to termination of membership as follows in order of severity, provided that such actions are specifically authorized in the Professional Standards procedures of the Board's bylaws:

(a) Letter of Warning with copy to be placed in member's file;
(b) Letter of Reprimand with copy to be placed in member's file;
(c) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend, taking into consideration cost, location, and duration;
(d) Appropriate and reasonable fine not to exceed $15,000 *(Amended 5/13)*;
(e) Membership of individual suspended for a stated period of time not less than thirty (30) days nor more than one (1) year, with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a

*Under certain prescribed conditions, arbitration may be provided between a member and a nonmember of the Board, as, for example, between a REALTOR® and a client of the REALTOR®.

membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements. The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Board, within such time as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed $15,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated; *(Amended 11/13)*

(f) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); *(Amended 4/96)*

(g) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; *(Amended 5/02)*

(h) REALTORS® who are not members of a Board from which they purchase the multiple listing service and their users and subscribers remain obligated under the Code of Ethics on the same terms and conditions as REALTORS® and REALTOR-ASSOCIATE® members of that Board. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on that Board's members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. *(Amended 4/96)*

(i) Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of membership) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. *(Adopted 05/14)*

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel will be held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar the imposition of other forms of discipline which will not be held in abeyance. *(Revised 5/14)*

In addition to any discipline imposed, Boards and Associations may, at their discretion, impose administrative processing fees not to exceed $500 against respondents found in violation of the Code of Ethics or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed. Boards and Associations shall determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine. *(Revised 5/13)*

Board Officers and Hearing Panels should consult with the Board attorney and refer to the Case Interpretations as well as the Board bylaws and this *Code of Ethics and Arbitration Manual* for additional assistance in properly enforcing the Code of Ethics.

This Manual has been prepared as a guide to local Boards and State Associations as to the procedures to be followed in bringing disciplinary action against members or hearing business disputes submitted to arbitration. It is a revision of the *Code of Ethics and Arbitration Manual* first adopted in 1973 and subsequently revised in 1976, 1980, 1982, 1984, 1985, 1986, 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022. The first edition of this Manual was closely patterned after the *Code of Ethics and Arbitration Manual* of the California Association of REALTORS® that had been utilized by the local Boards in that state since January 1965. The initial favorable experience of California Boards and subsequently of Boards throughout the nation gives credence to the procedures contained in the Manual. The current edition incorporates revised provisions that reflect the experience and suggestions from Member Boards approved by the Professional Standards Committee and the Board of Directors of the National Association.

Authority: Article VIII, Section 3, Constitution, National Association of REALTORS®, states:

> *There shall be a Professional Standards Committee. It shall be the duty of this Committee to interpret the Code of Ethics, to consider and recommend appropriate action on inquiries of Member Boards and Board Members concerning enforcement thereof, and to recommend amendments thereto as it deems necessary or advisable.*

It shall be the duty of this Committee to:

(1) interpret the Code of Ethics

(2) consider and recommend appropriate action on inquiries of Member Boards and Board Members concerning enforcement thereof

(3) recommend amendments thereto as it deems necessary or advisable

In fulfillment of its responsibility, the Professional Standards Committee has reviewed the content of this Manual, including the revisions made therein, and has adopted said Manual to be provided and recommended to local Boards and State Associations for adoption and incorporation into their respective bylaws, subject to review and adaptation by their legal counsel. This review and adaptation ensures that the procedures adopted by the local Board or State Association are consistent with the policies adopted by the National Association and with the requirements of law of the state in which they are located.

In no event should the Manual be adopted by a local Board or State Association without first having been approved by Board legal counsel. In this connection, it may be necessary for counsel to modify certain of the procedures described to assure that they are consistent with the state arbitration statute, if one is in effect. The adoption and incorporation of this Manual into the bylaws of the local Board or State Association, adapted and modified as may be necessary to ensure consistency with applicable law, will also ensure appropriate enforcement of the Code of Ethics and the establishment of appropriate arbitration procedures by the Member Boards. In the absence of adopting this recommended Manual and incorporating it into the bylaws, a Member Board is required by the National Association to establish appropriate Professional Standards procedures, to have them reviewed by Board legal counsel, and to provide to the National Association a letter from Board counsel indicating that such a review assures due process in Professional Standards procedures of the Board, and that they comply with applicable laws of the state. Such procedures must also comply substantively with the policies and procedures set forth in this Manual to the extent that such policies and procedures are consistent with applicable law.

Objectives: The courts have held that membership in a local Board is a valuable property right. It cannot be taken away without justifiable cause, whether provided for in the bylaws or not. The right to use the term "REALTOR®" or "REALTOR-ASSOCIATE®," or to retain membership in a local Board, may not be withdrawn without the members being given reasonable opportunities to defend themselves. Failure to afford adequate "due process" in controversies involving the Code of Ethics or arbitration can, and in some instances already has, subjected the Boards and their members to adverse litigation.

This Manual, therefore, with appropriate modifications, which any local Board can adopt into its bylaws by reference, has the following objectives to:

(1) provide a procedure which will be upheld by the courts
(2) clearly define to members the types of conduct which may result in disciplinary action being taken
(3) sufficiently outline the procedures so that officers of the Board from year to year can readily learn how to proceed in accordance with the Bylaws and general state law
(4) eliminate haphazard methods which may result in confusion and dissatisfaction
(5) clothe the disciplinary body with dignity which will demand respect by those brought before it
(6) give the disciplinary body stability so that it may not be subject to personal pressure
(7) create a method of settling business disputes which will command public respect and confidence of members
(8) better protect the Board against legal actions, whether substantive or of the "nuisance" nature
(9) require members to arbitrate those contractual and specific non-contractual disputes defined by this Manual within the framework of the Board rather than a court of law
(10) give members reasonable assurance that:
    (a) the Code of Ethics will be enforced
    (b) the procedure will protect them against unfair and unsubstantiated charges
    (c) only respected and qualified persons will sit in peer judgment
    (d) protection is given against the necessity of expensive and unjustified legal actions

ETHICS

Statements of Professional Standards Policy Applicable to Ethics Proceedings

Approved by the Professional Standards Committee and the Board of Directors of the National Association of Realtors®

11. Realtor® principal may be joined in any complaint filed against a Realtor® nonprincipal or Realtor Associate® licensed with the Realtor® principal or his firm

(a) The Realtor® principal with whom a Realtor® nonprincipal or Realtor Associate® is affiliated shall not be automatically joined in any ethics complaint against the Realtor® nonprincipal or Realtor Associate®. *(Revised 4/95)*

However, the Realtor® principal may be joined as a respondent in the complaint by action of the complainant, by review of the Grievance Committee, or by determination of the Hearing Panel prior to the commencement of the hearing based on the facts of the complaint. If, however, the complaint is amended after the hearing has commenced, pursuant to Section 21(f)(2), the Realtor® principal who has been added to the complaint has the right to have the hearing reheard from the beginning by the same Hearing Panel or may waive this right.

(b) The Realtor® principal joined in such complaint shall not be automatically found in violation of the Code of Ethics if the Realtor® nonprincipal or Realtor Associate® is judged in violation, but the finding should be based on the facts and merits of the case.

(c) Discipline of the Realtor® principal, if any, may vary from that imposed upon the Realtor® nonprincipal or Realtor Associate®.

12. Adoption of Code of Ethics or Standards of Practice by Member Boards and State Associations

A local Board or State Association shall not adopt any set of rules, regulations, policies, and practices which purport to be in lieu of, in addition to, or an extension of the Code of Ethics and Standards of Practice of the National Association of Realtors®. *(Amended 11/89)*

13. Articles and publications on the Code of Ethics

The National Association reserves the exclusive right to interpret the Code, its applications, and its proper enforcement to Member Boards and Board Members.

The National Association does not endorse or recommend any article or publication concerning ethics which is not published by the National Association or its institutes, societies, and councils and authorized by the National Association.

14. Statement of policy to State Associations and local Boards concerning the state real estate regulatory authority adopting and incorporating the Code of Ethics of the National Association into state law or regulations

Historically, the Professional Standards Committee of the National Association has sought to promulgate the awareness and understanding of Realtors® and Realtor Associate®s, as well as the general public, of the Code of Ethics of the National Association and its distinctive obligations accepted voluntarily by the members of the constituent Member Boards of the National Association of Realtors®.

The Code and its interpretations are copyrighted, and the National Association seeks on a continuing basis to diligently guard and protect its rights and the rights of its Member Boards to preserve the distinctive wording of the Code and the unique application of its obligations to members of Boards of Realtors®. This protection is based upon a completely voluntary acceptance of and adherence to the Code by such members, subject to the sole right of interpretation of the Code by the Professional Standards Committee of the National Association and the appropriate enforcement of the Code by Member Boards of Realtors® in accordance with the provisions of Article IV, Sections 1 and 2, *Bylaws*, National Association of Realtors®.

At the same time, the National Association has sought to persuade states and their regulatory agencies to strengthen the laws and regulations governing the industry in order to better protect the public.

As a result of the coincidence of the professionalization and consumer protection objectives of the National Association and of state authorities, in some instances, state authorities have sought to adopt or incorporate the Code of Ethics of the National Association into the laws or regulations of the state, either expressly or by reference. Moreover, some State Associations and Member Boards have encouraged such action on the theory that what is good for clients of Realtors® should be good for clients of every real estate licensee.

While the National Association desires to promote in every way the strengthening of the consumer protection afforded by the real estate license laws and regulations, the adoption or incorporation of the Code of Ethics should **not** be encouraged or endorsed for the following reasons:

- First, the Code of Ethics is copyrighted by the NATIONAL ASSOCIATION OF REALTORS®, and such action would destroy or seriously erode the right of the Association to limit the usage of the Code and references to it to REALTORS®, REALTOR ASSOCIATE®s, and those authorized by the Association.

- Second, the Code of Ethics is subject to interpretation only by the Professional Standards Committee of the National Association. However, if enacted into law, the Code would be subject to interpretation by the regulatory authority or by the courts. Thus, there exists a serious risk that the same Code provision might be subject to differing interpretations in the same jurisdiction as well as differing interpretations in different jurisdictions, and the National Association would thereby be effectively preempted from control and administration of its own creation.

- Third, the enforcement of the Code of Ethics is a responsibility of the Board of REALTORS®. Should the Code be incorporated into law, enforcement responsibility would necessarily shift to governmental authorities. Not only would this constitute a fundamental preemption of a traditional Board function, but it would also hamper consistent comprehensive enforcement nationwide.

- Fourth, adoption of the Code of Ethics by states and their regulatory authority would obviate its aspirational objectives and character. Government cannot, by its nature, demand the highest standards of professional competence and performances without risking political attack on the ground that it has created a barrier to business entry. However, high standards may be adopted voluntarily by those engaged in the business who are prepared to accept the judgment of their peers and the highest measure of social responsibility. Hence, the private, voluntary Code can provide a direction for the development of professional responsibility which is rarely within the capacity of the Code if enacted into law.

16. Filing fee to accompany requests for ethics hearings

In the interest of effective and consistent enforcement of the Code of Ethics, no filing fee may be required to accompany a complaint alleging unethical conduct on the part of a Board Member.

17. Applicability of Code of Ethics to Board Members

REALTORS® are subject to the Code of Ethics of the National Association. Board Members holding other classifications of membership are encouraged to abide by the principles established in the Code, but are not subject to the disciplinary authority of the local Member Board with regard to conduct inconsistent with the Code of Ethics. *(Amended 2/94)*

REALTORS® who participate in MLS or otherwise access MLS information through any Board or Association in which they do not hold membership are subject to the Code of Ethics in that Board or Association on the same terms and conditions as Board Members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. *(Amended 4/96)*

18. Local Member Board requests for the conduct of ethics and arbitration hearings by the State Association

A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve either on a Hearing Panel or on behalf of the Board of Directors. If, after making all reasonable efforts, the Board still cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. *(Amended 11/03)*

In instances where a local Member Board determines by resolution of its Board of Directors that it is incapable of providing an impartial panel for the conduct of an ethics or arbitration hearing (or appeal or procedural review hearing), the complaint or the request for arbitration (and the ethics appeal or procedural review request, if any) may be referred by the Board President to the State Association of REALTORS® for a hearing. With regard to requests for arbitration, in the event the State Association declines to conduct the arbitration or to delegate its authority to another Board or regional enforcement facility, the parties shall be relieved of their obligation to arbitrate as established in Article 17 of the Code of Ethics. With regard to alleged violations of the Code of Ethics, such allegations may be received and considered by the State Association and (1) dismissed as unworthy of further consideration, (2) heard by a Hearing Panel of the State Association's Professional Standards Committee, or (3) referred to another Board or regional enforcement facility. If referred for a hearing to the State Association's Professional Standards Committee or to another local Board or regional enforcement facility, a Hearing Panel will be appointed to conduct the hearing and forward the determination and sanction, if any, to the local Member Board. The Board of Directors of the local Member Board shall then implement the decision of the Hearing Panel in strict accordance with its terms and conditions. Any requests for appeal or procedural review should be considered by an appropriate body of the State Association or "deputized" local Board or regional enforcement facility in accordance with the relevant established professional standards procedures. *(Amended 11/93)*

19. Confidentiality of determinations rendered in ethics and arbitration hearings

The allegations, findings, and decisions rendered in ethics and arbitration hearings are confidential and should not be reported or published by the Board, any member of a tribunal, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. *(Revised 11/91)*

20. Statement of policy related to Article 17 of the Code of Ethics

Article 17 is not to be construed as precluding a REALTOR® who is a defendant in litigation from joining a cooperating agent and/or subagent in the litigation.

21. Adoption of the *Code of Ethics and Arbitration Manual* by Member Boards

Member Boards and State Associations are not required to adopt the *Code of Ethics and Arbitration Manual* verbatim, but no Member Board may adopt or follow any procedures inconsistent with the precepts enunciated in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

22. Board and State Association publications or audiovisual programs concerning the Code of Ethics and its enforcement

Any articles, audiovisual programs, or any type of publication related to the Code of Ethics, its interpretation, or its enforcement that has not been prepared by or approved by the Professional Standards Committee of the National Association must be prefaced by a statement indicating that the contents reflect the understanding and opinions of the author(s) and do not represent an official expression of policy by the National Association. To the extent that any article, audiovisual program, or publication prepared by any individual or organization other than the National Association varies in any degree from the Code of Ethics, its interpretation, or its enforcement procedures as approved by the Professional Standards Committee of the National Association, the policies of the National Association shall take precedence.

No article, audiovisual program, or other publication may be designated as an official expression of policy concerning the Code of Ethics, its interpretation, or its enforcement without the express written approval of the National Association.

Local Boards and State Associations are encouraged to consider preparation of such articles, audiovisual programs, or other publications and are requested to submit them to the Professional Standards Committee or its staff representatives for review and approval prior to publication.

24. Formulation of Multi-Board or Regional Grievance or Professional Standards Committees for Code enforcement in areas where Boards have limited membership

Member Boards are authorized to enter into collective agreements by which the Boards would share the responsibility for enforcement of the Code of Ethics, including the conduct of arbitration hearings, on a joint basis.*

25. Expenses related to conduct of hearings by Multi-Board or regional Grievance or Professional Standards Committees

Expenses related to the conduct of hearings by a multi-Board or regional Grievance Committee or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by the signatory Boards and shall not be supported by fees charged to the members other than as otherwise authorized by the *Code of Ethics and Arbitration Manual*. *(Revised 11/98)*

26. Burdens and standards of proof in arbitration and ethics hearings

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

The standard of proof on which an arbitration hearing decision is based shall be a "preponderance of the evidence." Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.

"Clear, strong, and convincing" shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established. *(Revised 2/92)*

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*A sample format agreement approved by the Professional Standards Committee to establish a collective agreement is included as Specimen Form #E-19 in **Part Six** and #A-19 in **Part Thirteen** of this Manual.

Appeals of ethics Hearing Panel decisions based on an alleged misapplication or misinterpretation of an Article(s) of the Code of Ethics shall be determined based on the correctness of the Hearing Panel's decision.

Appeals of ethics Hearing Panel decisions based on an alleged procedural deficiency or failure of due process, and procedural review of arbitration hearing procedures shall be determined based on whether the effect of the deficiency was to deny the appellant a fair hearing.

Appeal panels may modify discipline proposed by Hearing Panels only in instances where the discipline proposed is not authorized or where the appeal panel concludes that the Hearing Panel abused its discretion. *(Adopted 11/99)*

29. Applicability of the Code of Ethics

A REALTOR® shall be subject to disciplinary action under the Code of Ethics with respect to all of their activities. *(Revised and effective November 13, 2020)*

31. "Cooperation" defined

The obligation to cooperate, established in Article 3 of the Code of Ethics, relates to a REALTOR®'s obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller. An offer of cooperation does not necessarily include an offer to compensate a cooperating broker. Compensation in a cooperative transaction results from either a blanket offer of subagency made through MLS or otherwise, or offers to compensate buyer agents, or, alternatively, individual offers made to subagents or to buyer agents, or other arrangements as negotiated between listing and cooperating brokers prior to the time an offer to purchase is submitted. *(Amended 11/09)*

32. "Expert witness" on the Code of Ethics

The NATIONAL ASSOCIATION OF REALTORS® reserves to itself the exclusive right to interpret the Code of Ethics through consideration and action of the National Association's Professional Standards Committee. A member, if called upon to testify on the Code of Ethics or its interpretation in civil litigation, must clearly indicate that the information provided reflects the REALTOR®'s personal opinion and sense of ethics in light of his experience in the real estate business. *(Adopted 2/89)*

33. Use of panels in place of Committees and the Board of Directors

✍ Any matter brought before the Grievance Committee, Professional Standards Committee, or Board of Directors may be considered by a panel of members or Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Three (3) or more members shall constitute a panel of the Grievance and Professional Standards Committees that can act on behalf of those committees. Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute a panel of the Board of Directors, that can act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the full Committee or the full Board of Directors, except as otherwise provided in this Manual.

Panel members should be experienced, knowledgeable persons of judicial temperament.

In appointing such a panel, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

Associations are also authorized to adopt policies and procedures assigning Grievance Committee functions to a panel of the Professional Standards Committee. Where Grievance Committee functions are delegated to a panel of the Professional Standards Committee, all provisions of this Manual applicable to Grievance Committees will apply to a panel of the Professional Standards Committee acting in that capacity. Three (3) or more members shall constitute a panel of the Professional Standards Committee to assume the responsibilities of the Grievance Committee. *(Adopted 05/15)*

When possible, panels should be strongly encouraged to use conference calls, virtual meetings, or alternative communication technologies for meetings to expedite the decision-making process. Use of conference calls, virtual meetings, or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, Remote Testimony and Virtual Hearings. *(Revised 11/21)*

34. Consolidation of ethics complaints arising out of the same transaction

In the interest of maximizing the resources of Boards and Associations, Grievance Committees should use all reasonable efforts to ensure that all ethics complaints arising out of the same transaction or event are consolidated and scheduled for hearing in a single hearing. Respondents to ethics complaints do not have the right to a separate hearing unless they can demonstrate that consolidation of complaints would prevent them from receiving a fair hearing. *(Adopted 4/93)*

35. Separation of ethics complaint and arbitration request

When an ethics complaint and an arbitration request are filed at the same time arising out of the same facts and circumstances, the arbitration hearing shall be held first and the ethics hearing shall be conducted by a different Hearing Panel after the conclusion of the arbitration hearing. *(Adopted 11/93)*

36. Translations of the Code of Ethics

While Boards and Associations are encouraged to make information regarding the Code of Ethics and its appropriate enforcement available as widely as possible, translations (other than by the National Association) into languages other than English are not official and should carry a notice advising readers that they have been prepared for informational purposes only. *(Adopted 4/94)*

37. Discipline for prior violations of the Code of Ethics

In instances where REALTORS® are found to have violated the Code of Ethics, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Board or Association, in the member's file in determining discipline, and the rationale for the current disciplinary action can be provided to the parties and the Directors as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel). *(Amended 11/13)*

38. Hearing Panels to be conversant with applicable state law under board of choice across state lines

Where membership is provided under board of choice across state lines, Hearing Panels must be conversant with and apply the relevant state's laws and regulations in determining how the Code of Ethics will be interpreted/applied in instances where the underlying transaction occurred out of state and involved a respondent licensed in that state. *(Adopted 11/95)*

40. Cooperative enforcement agreements

To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Boards and Associations are required to enter into cooperative enforcement agreements to ensure Boards and/or Associations have an aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Board (which may be the state association) in a cooperative enforcement agreement. *(Revised 5/08)*

42. Previously dismissed ethics complaints/ arbitration requests

If an ethics complaint or arbitration request is received and reviewed by a Board's Grievance Committee or Board of Directors and is dismissed as not warranting a hearing, the respondent(s) shall not subsequently become subject to the same (or substantially similar) ethics complaint or arbitration request in the same or another Board. *(Adopted 5/97)*

Dismissal of an arbitration request by a Board of REALTORS® because the dispute is not arbitrable based on Article 17 or other grounds established in the *Code of Ethics and Arbitration Manual,* does not prohibit REALTORS® from exercising other remedies that may be available to them, including litigation. *(Adopted 5/99)*

44. Effective dates of the Code of Ethics and Standards of Practice and the *Code of Ethics and Arbitration Manual*

All changes to the Code of Ethics and Standards of Practice carry an annual effective date of January 1 of the year following their approval by the Board of Directors of the National Association and, where necessary, by the Delegate Body. *(Adopted 11/89)*

To ensure consistent, uniform enforcement of the Code of Ethics nationwide, all changes in professional standards policy normally incorporated into the National Association's *Code of Ethics and Arbitration Manual* become effective on January 1 of the year following their approval by the Board of Directors of the National Association. Unless specifically provided otherwise by the Board of Directors, associations shall have sixty (60) days from their effective date to adopt them. *(Revised 05/15)*

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor. *(Adopted 5/98)*

45. Publishing the names of Code of Ethics violators

Associations may, as a matter of local discretion, adopt one of the following options authorizing the publication of the names of ethics violators, subject to the following qualifications:

Publication Option #1:

- Publication can only occur after a second violation occurs within three (3) years.
- Ethics citation discipline may be included in the violation count if the association has affirmatively authorized publication within their citation policy.

- Publication can only be made in an official communication vehicle intended primarily for members of the Association(s) in which the violator holds (held) membership. Where the official communication vehicle is electronic or Internet-based, access must be limited to Association members.
- The name of the firm the violator is (or was) licensed with cannot be published.
- Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where a second violation is determined within three (3) years.
- Other than the violator's name, the only additional information that may be published is the Article(s) violated, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published.
- At least one of the violations must be based on conduct which occurs after the adoption of the Association's publication procedures.

Associations may adopt Publication Option #1 and may increase the timeframe with which publication occurs for certain discipline, the content of the publication to include photos or a description of the violation(s), or any combination thereof, only to the extent that is permissible under Publication Option #2. Any program that exceeds the scope of Publication Option #1, as defined above, must include local or state association legal counsel review of the decision, discipline, and information to be published.

Publication Option #2:

- Publication can occur in all instances in which violators are disciplined with a letter of reprimand, a fine (ethics citation fines are not included in publications unless the association has affirmatively adopted policy to include them), a suspension, and/or an expulsion.
- Prior to publication, local or state association legal counsel must review the decision, discipline, and information to be published.
- Publication can only be made in an official communication vehicle intended primarily for members of the Association(s) in which the violator holds (held) membership. Where the official communication vehicle is electronic or internet-based, access must be limited to Association members.
- The name of the firm the violator is (or was) licensed with cannot be published.
- Publication must be consistent and uniform. This means that publication may not occur selectively but must be used in each instance where the discipline imposed meets the Association's publication criteria.
- Other than the violator's name and a photo of the violator, the only additional information that may be published is the Article(s) violated, a description of the violation(s) with all names redacted except for the name of the violator, and the discipline imposed, except that in cases where the violator's name is similar to another member's name, the violator's license number or office address (or both) may also be published.
- Publication must be based on conduct which occurs after the adoption of the Association's publication procedures. *(Revised 05/18)*
- Publication under this policy does not authorize dissemination of ethics complaints. Findings and decisions may not be disseminated in their original form, and must be condensed prior to publication. *(Adopted 05/19)*

47. New member orientation program

Effective January 1, 2001, applicants for REALTOR® membership shall complete an orientation program on the Code of Ethics of not less than two (2) hours and thirty (30) minutes of instructional time. This requirement can be satisfied through instruction provided by the local Board or by another Board and can include classroom instruction, home study, correspondence study, or Internet-based instruction. Any orientation program must meet the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. REALTORS® who having completed such orientation shall not be required to complete further Code of Ethics orientation upon application for membership in another Board provided that REALTOR® membership has been continuous or that any break in membership is for one (1) year or less. *(Adopted 11/99)*

48. REALTORS®' Code of Ethics training

Effective January 1, 2001 through December 31, 2004, and for successive four (4) year periods ending December 31, 2016, REALTORS® were required to complete quadrennial ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. Beginning January 1, 2017 through December 31, 2018, and for successive two (2) year periods thereafter, REALTORS® were required to complete biennial ethics training of not less than two (2) hours and thirty (30) minutes of instructional time. In 2019, the Board of Directors extended the training requirement from every two (2) years to every three (3) years, and extended the then current cycle deadline from December 31, 2020 to December 31, 2021. The following cycle begins January 1, 2022 and ends December 31, 2024. REALTORS® completing such training during any three (3) year cycle shall not be required to complete additional ethics training in respect of this requirement as a requirement of membership in any other Board or Association.

A REALTOR® completing the new member Code of Ethics orientation during any three (3) year cycle shall not be required to complete additional ethics training in respect of this requirement until a new three (3) year cycle commences.

Failure to complete the required periodic ethics training shall be considered a violation of a membership duty.

Failure to meet the requirement will result in suspension of membership for the first two months (January and February) of the year following the end of any three (3) year cycle or until the requirement is met, whichever occurs sooner. On March 1 of that year, the membership of a member who is still suspended as of that date will be automatically terminated.

Every Board and Association is required to provide access to necessary ethics training programs either locally, in conjunction with other Boards and Associations, or through other providers the Association partners with. Any training offered pursuant to this requirement must meet the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. *(Amended 11/19)*

49. Professional standards administration training

Enforcement of the Code of Ethics is a privilege and responsibility of each Board and Association as established in Article IV of the *Bylaws* of the NATIONAL ASSOCIATION OF REALTORS®. Every Board and Association must designate a person or entity responsible for administration of professional standards processes. Persons primarily responsible for administration of professional standards processes must successfully complete training every four (4) years on professional standards administration meeting the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. *(Revised 11/14)*

50. Separate subcommittees for ethics, arbitration, and mediation

Boards and Associations can meet their professional standards enforcement responsibility through separate committees or subcommittees specifically delegated responsibility for arbitration, mediation, the conduct of hearings to resolve ethics complaints and alleged violations of other membership duties, and to conduct ombudsman programs. *(Revised 05/15)*

54. Personal safety in professional standards proceedings

Boards and Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings. In instances where, in the opinion of the presiding committee or Hearing Panel Chair, there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with staff, Board or Association elected leadership, or Board or Association counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, Board or Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Board of Directors concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Board of Directors (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Board of Directors, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Board of Directors may, at their discretion, share any or all information including the complaint, response, or other documentation or information in their possession with appropriate law enforcement or other government agencies. *(Adopted 5/00)*

55. Transmitting devices

Cellular phones, two-way radios and other transmitting devices may not be operated during ethics hearings, arbitration hearings, appeal hearings, and procedural review hearings absent specific, advance authorization from the panel chair. *(Adopted 11/04)*

56. Remote testimony and virtual hearings

The policies and procedures established in the National Association's *Code of Ethics and Arbitration Manual* contemplate that parties and their witnesses will participate in ethics and arbitration hearings in the physical presence of hearing panels and the respective parties or, at the association's sole discretion, in virtual hearings. If hearings are in person, parties. and their witnesses may request permission to participate in such proceedings remotely. *(Revised 11/21)*

Parties and witnesses to ethics and arbitration hearings may be permitted to participate remotely in hearings at the discretion of the hearing panel chair. Only those parties eligible to attend the entire hearing in person would be entitled to participate remotely for the entirety of the hearing. Witnesses may only participate remotely for their own testimony. *(Revised 11/21)*

Hearing panels, association staff, or association counsel should employ steps to verify the identity of remote participants, to preclude unauthorized individuals from being in the presence of the remote participant, and to employ appropriate safeguards to ensure confidentiality of the proceedings. *(Revised 11/21)*

57. Case Interpretations are official policy

The Case Interpretations of the Code of Ethics approved by the National Association's Professional Standards Committee and published in *Interpretations of the Code of Ethics* illustrate and explain the principles articulated in the Articles and Standards of Practice. While a REALTOR® cannot be found in violation of a Standard of Practice or a Case Interpretation, both are official statements of National Association policy and are not merely advisory. Both can be cited by complainants in support of alleged violations of Articles and by hearing panels in support of decisions that an Article(s) has been violated. *(Adopted 11/10)*

59. Associations to provide ombudsman services

Every local and state association of REALTORS® is required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Policy Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016. *(Adopted 11/14)*

60. "Alternate" hearing panelists

Associations may, but are not required to, convene hearing panels that include one or more alternate members. If alternates are present at hearings, they should be seated apart from the hearing panel, may not participate in any way unless called on to replace a panel member, and are bound by the same duties that are applicable to panel members.

If alternate panel members are not called on to replace a panel member and if the association's policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. *(Adopted 11/14)*

Part One — Ethics General Provisions

Section 1. Definitions Relating to Ethics

As used herein,

(a) "Agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation. *(Revised 4/98)*

(b) "Association" means this organization, either the ____________ ________________________ (local) Association of REALTORS® or the ___________________________ (state) Association of REALTORS®. As used herein, the term "association(s)" refers to board(s) and association(s) of REALTORS®. *(Revised 11/17)*

(c) "Broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 4/98)*

(d) "Client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship. *(Revised 11/97)*

(e) "Counsel" means an attorney at law or a REALTOR® whether in the same or in another firm. *(Amended 11/95)*

(f) "Customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTOR® or the REALTOR®'s firm. *(Revised 11/97)*

(g) "Directors" means the Board of Directors of the Board (State Association) as interpreted by Policy Statement #33. *(Revised 11/91)*

(h) "Electronically," "electronic means," "technology," "technological means," and related terms include, but are not limited to, the Internet, Internet-based websites, all forms of Internet communication, e-mail, facsimile correspondence, telephone, and all other forms of distance communication. *(Adopted 5/06)*

(i) "Expulsion from Membership" means expulsion from membership in the Board for a period not less than one (1) but not more than three (3) years, with reinstatement to membership by application only as a new member after the end of the period of expulsion, with the application considered on its merits.

(j) "Fine—Appropriate and Reasonable" means a fine commensurate with the gravity of the determined offense against the Code and against the Board, and ranging in any amount determined, but not to exceed $15,000, to any Board Member with respect to any single ethics hearing, irrespective of the number of Code violations determined. *(Revised 5/13)*

(k) "Hearing" may refer either to an ethics hearing relating to disciplinary matters or to an arbitration hearing in which the dispute generally involves entitlement to a commission or to compensation. *(Revised 11/93)*

(l) "Immediate Family" as used in the Code of Ethics includes, but is not limited to, the REALTOR® and the REALTOR®'s spouse and their siblings, parents, grandparents, children (by birth or adoption), grandchildren, and other descendants. *(Adopted 11/89)*

(m) "In person" means in one's physical presence. *(Adopted 11/21)*

(n) "Letter of Reprimand" means a letter to a Board Member advising of a lack of professional conduct determined by a due process hearing of the Professional Standards Committee and affirmed by the Board of Directors, and advising that the letter is to be construed as an official reprimand. *(Revised 11/88)*

(o) "Letter of Warning" means a letter to a Board Member advising of a lack of professional conduct determined by a due process hearing of the Professional Standards Committee and affirmed by the Board of Directors, and warning that future similar conduct could result in more severe sanction. *(Revised 11/88)*

(p) "Member" means REALTOR® and REALTOR ASSOCIATE® members of this Board (State Association). REALTORS® who participate in MLS or otherwise access MLS information through any Board in which they do not hold membership are subject to the Code of Ethics in that Board. *(Amended 11/95)*

(q) "On-site" means in the physical presence at a particular location or site. *(Adopted 11/21)*

(r) "Party" (Parties) means the complainant(s) or respondent(s) in disciplinary proceedings and in arbitration hearings referred to in **Part Four** and **Part Ten** of this Manual. *(Revised 11/91)*

(s) "Person" means a natural person. *(Adopted 11/13)*

(t) "Probation" means that a form of discipline recommended by the Hearing Panel will be held in abeyance for a stipulated period of time which may not exceed one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline shall be considered fulfilled, and the record shall reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. *(Revised 11/14)*

(u) "Professional Standards Administrator" is the Board staff person primarily responsible for the administration of all professional standards processes. *(Adopted 11/15)*

(v) "Public Trust" refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. *(Amended 11/20)*

(w) "Real estate professionals", for purposes of Article 15, are those engaged in the disciplines of real estate specified in Article 11. *(Adopted 5/22)*

(x) "REALTOR® principal" includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm who subscribe to the Code of Ethics as a condition of membership in a local Board, State Association, and the NATIONAL ASSOCIATION OF REALTORS®. The phrase REALTOR® principal includes those REALTORS® who participate in a Multiple Listing Service through any Board or Association in which they do not hold membership. *(Revised 5/97)*

(y) "Remote" means from a distance without a physical presence, i.e., video or teleconference. *(Adopted 11/21)*

(z) "Suspension of Membership" means suspension of all Board/Association provided membership rights, privileges and services (including those provided by the State and National Association) not available to nonmembers for a period not less than thirty (30) days and not longer than one (1) year on terms and conditions expressly stated for an established period of time, including use of the terms REALTOR® and REALTOR ASSOCIATE®, with automatic reinstatement of all withdrawn membership rights, privileges, and services at the end of the period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements). Although membership rights, privileges, and services are withdrawn as specified in the notice of suspension, membership, per se, including the duty to abide by the Code of Ethics and the obligation to pay membership dues continues during the period of suspension. Suspended members shall not be obligated for payment of other fees or charges except for continued optional services of the Board. Any failure to abide by the terms and conditions of the suspension, or the finding of a violation of the Code of Ethics after a hearing as provided by the professional standards procedures of the Board bylaws, shall be grounds for consideration as to possible extension of the suspension or expulsion from membership in the Board. *(Revised 05/04)*

(aa) "Training Requirement for Ethics or other Appropriate Training" means a letter from the Board President or Professional Standards Chairperson to a Board Member advising of a lack of professional conduct determined by a due process hearing by the Professional Standards Committee, and directing the member to attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend taking into consideration cost, location, and duration.

(bb) "Tribunal" means those persons serving in a given case on a Grievance Committee or a Hearing Panel of the Professional Standards Committee in either an ethics or arbitration proceeding, or a Board of Directors or appropriate body appointed by a Board of Directors to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter. *(Revised 5/88)*

(bb) Although ombuds and mediators who serve in either capacity are not part of a tribunal, they nonetheless may not participate in the deliberation of any tribunal on the same matter for which they provided the ombuds or mediation service. An ombuds may not serve as a mediator on the same matter for which they provided the ombuds service. *(Adopted 11/22)*

(cc) "Unauthorized disclosure" means a report or publication under any circumstances not established in this Manual. *(Adopted 11/91)*

(dd) "Virtual" means existing, seen, or happening on-line or on a computer screen, rather than in person or in the physical presence. *(Adopted 11/21)*

Section 2. Qualification for Tribunal

(a) No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated. *(Revised 11/09)*

(b) A person shall automatically be disqualified as a member of a tribunal in any case in which the person is (1) related by blood or marriage to the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent; (2) an employer, partner, employee, or in any way associated in business with the complainant, respondent, or a REALTOR® acting as counsel for the complainant or respondent; (3) a party to the hearing, or a party or a witness in any other pending case involving a party to this hearing; or (4) objected to by a party as provided in **Part One,** Section 2(f). *(Revised 4/96)*

(c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Committee) shall sign a statement (1) that the member is not disqualified for any of the foregoing reasons, and (2) that the member knows of no other reason that might prevent him from rendering an impartial decision. (Form #E-10, Certificate of Qualification, **Part Six** of this Manual.)

(d) Every member of a tribunal (except a member of the Grievance Committee acting pursuant to the provisions of Section 20 of **Part Four** of this Manual) shall also avoid, as far as possible, discussing the case with any person other than a member of the tribunal prior to commencement of the hearing. If the member does engage in any such discussion before the hearing, the member must disclose the fact to the parties and to the other members of the tribunal no later than at the beginning of the hearing.

(e) All members of a tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal member shall not discuss the tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors, the bylaw provisions of the Board, or by law as may be required, except that a member of the Grievance Committee acting pursuant to the provisions of Section 20 of **Part Four** of this Manual shall not be precluded from discussion necessary to the preliminary review.

Unauthorized disclosure relates to tribunal members and to parties and includes any report or publication under any circumstances not established in this Manual. The following are circumstances where disclosure by a party to an ethics and/or arbitration proceeding is authorized:

(1) Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.

(2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Board. *(Revised 11/95)*

(3) Where providing the decision of an arbitration hearing panel to an association of REALTORS® or to an MLS will enable that entity to correct records of sales or lease transactions or other historical records. *(Revised 11/06)*

(f) Any party may file with the Professional Standards Administrator a written request for disqualification of a member of a tribunal (Hearing Panel or Board of Directors), stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a tribunal member from rendering an impartial, unbiased, and knowledgeable decision). Challenges submitted pursuant to this Section for ethics and arbitration hearings will be determined by the Professional Standards Committee Chairperson, or, if challenge to the Chairperson is made, by the Professional Standards Committee Vice Chairperson, or, if challenge to both the Chairperson and Vice Chairperson is made, by the Board President. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Board President or, if the challenge is to the Board President's qualifications, the next ranking Board officer. A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he files the request within ten (10) days from the date a list of names of members of the Professional Standards Committee or Board of Directors has been transmitted to the party (see **Part Four,** Section 21(c), Ethics Hearing). However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a tribunal from rendering an impartial decision. *(Revised 11/14)*

However, none of the foregoing is to be construed to allow a challenge to the qualifications of members of a Board's or State Association's Grievance Committee or Board of Directors (or panel of Directors or Executive Committee) convened to review any action taken by a Grievance Committee. *(Revised 11/98)*

(g) If a member of a tribunal fails or is unable to participate in a hearing, the remaining members of the tribunal may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent himself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If all the parties do not agree to proceeding without the full number of the tribunal originally designated, the Chairperson of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the Chairperson cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

Section 3. Duty to Give Evidence

The parties to ethics and arbitration hearings are primarily responsible for production of witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at a scheduled hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated if it can be shown that the witness had information or evidence relevant to the issue or issues before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the Chair of the Hearing Panel either before the hearing commences, if possible, or at the time of the hearing. If a question of whether a witness is required to appear is raised at a hearing and the Chair rules that the witness must appear, the party seeking to compel the appearance of the witness may request that the hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance. *(Revised 11/93)*

If, after being so advised, a witness refuses to appear, the Chair may, at its discretion, bring a charge against the witness for failure to comply with Article 14. *(Revised 11/93)*

Section 4. Right of Counsel to Appear

Every party may be represented by legal counsel or by a REALTOR® of their choosing (or both). The role of counsel (whether legal or otherwise) includes the making of opening and closing statements on behalf of the party represented, examining and cross-examining witnesses, and introducing affidavits, documents, and other admissible relevant evidence, but does not include testifying as a witness unless the panel determines such testimony is essential to ensure due process. REALTORS® providing such representation are cautioned to avoid the unauthorized practice of law. In the event parties do not give fifteen (15) days' notice prior to the hearing of their intention to have counsel to the Board and all other parties, including counsel's name, address, and phone number, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. Where an ethics hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel. The tribunal may have legal counsel present to advise it on issues of procedure and law. The presence of Board legal counsel during executive session is a matter of local Board discretion. The role of Board legal counsel during a hearing is to provide procedural and legal guidance as requested by the Chairperson or by panel members. Board counsel is not a part of the Hearing Panel and may not take an active role in the conduct of the hearing, including examination or cross-examination of the parties or their witnesses. If Board legal counsel believes an action or procedure is inconsistent with the Board's established procedures or may result in potential liability to the Board, counsel's concerns should be communicated to the Chairperson of the Hearing Panel and the Chairperson shall make the final decision. *(Revised 5/99)*

Section 5. Witnesses

Every party may have witnesses present at the hearing, and the tribunal may summon its own witnesses. All witnesses, except those who are also parties, will be excused from the hearing after completion of their testimony and cross-examination unless otherwise provided for in the *Code of Ethics and Arbitration Manual*. *(Revised 11/14)*

All parties appearing at the hearing may be called as witnesses without advance notice. Any party who intends to call additional witnesses at the hearing must provide the Board and all other parties with the names of these witnesses at least fifteen (15) days prior to the hearing. Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the hearing, unless the other party agrees to allow their testimony. *(Revised 11/14)*

In any case where all of the names of witnesses a party intends to call at the hearing have not been provided within the time specified, if the Hearing Panel believes that the testimony of that witness(es) is essential to ensure due process, his testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain not less than five (5) days later. *(Revised 11/88)*

Questions as to whether a member who has been called as a witness but who refuses to appear, or asserts that his appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chair as soon as practical. Refusal to appear, after the Chair has determined that the member's appearance is required, may result, at the Chair's discretion, in charges that Article 14 has been violated being filed against the member. *(Adopted 11/93)*

Section 6. Conduct of Hearing

At any ethics or arbitration hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. Witnesses giving oral testimony shall be sworn in or affirmed by the Chairperson in accordance with ✍ the policy of the association. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. Attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused from the hearing except during their testimony); the Hearing Panel members (including alternates); Board staff and/or counsel, as deemed necessary; any court reporter, as requested; and, in any ethics proceeding, the respondent's REALTOR® principal, consistent with **Part Two,** Section 13(d) of this Manual. *(Revised 11/21)*

The Board shall have a court reporter present at the hearing or shall ✍ record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. (See Form #E-9, Outline of Procedure for Ethics Hearing, **Part Six,** and Conduct of an Ethics Hearing, **Part Five.**) *(Revised 5/16)*

Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the tribunal. Any and all recording should be conducted in accordance with state law. *(Revised 11/21)*

Appeals or procedural review proceedings shall not be recorded by the Board or the parties. *(Revised 5/16)*

The Board's recording or transcription shall be considered the official record of the proceeding. Copies of any recording or any transcript prepared from any recording of the hearing are to be used only for the purpose of appeals or procedural reviews, and may not be introduced into evidence at any subsequent hearing. Boards, at their discretion and upon the advice of counsel, may prohibit the parties from obtaining a copy of the recording or transcription if the request is received outside of the time frame allowed for appeals or procedural reviews. Any unauthorized use of the recordings or transcripts may be construed as a violation of

Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures. *(Revised 5/16)*

Any party to a hearing has the right to obtain a copy of the Board's official recording, subject to the aforementioned limitations, and subject to payment of the Board's duplication costs. Any duplication will be conducted under the supervision of the Board. If the Board transcribes its official recording, any party to the hearing may obtain a copy of the transcript, subject to the aforementioned limitations and paying the Board's transcription costs. If more than one party requests copies of the transcript, the Board's costs will be apportioned between or among the parties. *(Revised 5/16)*

If a party purchases a copy of the Board's official recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Board at no cost. After the Board has received a copy of the transcript (made from the Board's official recording), the Board shall make copies of the transcript available to any other party subject to their payment of the Board's duplication costs. *(Revised 11/10)*

It is recommended that recordings produced by the Board be maintained in the confidential professional standards files until a date when any sanction imposed by the Board has been completed. *(Revised 5/16)*

Section 7. Notices

(a) Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified, sent by first class mail addressed to the party's last known mailing address, or sent to the party by email. When possible, email is the preferred form of service for notices and documents pursuant the procedures specified in this Manual. Any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when handed to the party, mailed to the party, or sent to the party by email, unless otherwise specified in this Manual. Notices sent by email shall include the association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail. *(Revised 11/14)*

(b) Notice of hearing shall include the names of the members of the tribunal and be given not less than twenty-one (21) days beforehand. Twenty-one (21) days' notice is not required for postponed hearings (scheduled but extension granted before hearing commences) or for hearings that have commenced and been adjourned (recessed). *(Revised 11/14)*

Section 8. Interpretation of Bylaws

If any provision of the bylaws or a rule or regulation relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by that tribunal of the bylaws or of a rule or regulation shall be set forth as a separate finding, and the Directors, on appeal from a decision of a Hearing Panel, shall not be bound by the panel's interpretation.

Section 9. Waiver

Every member, for and in consideration of his right to invoke arbitration proceedings and to initiate complaints under the Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®, hereby waives any right of action against the Board, any Board Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request. *(Revised 11/87)*

Section 10. Communication and Clerical

Communications shall be directed to the Professional Standards Administrator. The Professional Standards Administrator shall render all necessary assistance to the parties, shall furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Board.

Section 11. Attempt to Influence Tribunal

Any attempt, directly or indirectly, to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or in writing submitted to the entire tribunal, is a breach of a duty of membership.

Part Two — Membership Duties and Their Enforcement

Section 12. Duties of Membership

The duties of membership include the following:

(a) to abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®

(b) to abide by the bylaws of this Board and its rules and regulations

(c) to submit to arbitration all disputes specified in **Part Ten** of this Manual by the procedure therein provided, and to abide by the arbitrators' award* *(Revised 11/96)*

Subject to any preliminary consideration by any administrative body of the Board or its subsidiary MLS, allegations or charges that a member has violated any membership duty shall be referred to the Professional Standards Committee for review in conformity with the procedures established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. Notwithstanding the foregoing, multiple listing services operated as committees of associations of REALTORS® or as subsidiary corporations wholly-owned by associations of REALTORS® may establish procedures for enforcement of their rules and regulations pursuant to the grant of authority and to the limitations established in Multiple Listing Policy Statement 7.21, Appropriate Procedures for Rules Enforcement, *Handbook on Multiple Listing Policy. (Revised 11/14)*

Section 13. Power to Take Disciplinary Action

After a hearing before the Professional Standards Committee as provided hereinafter, the Directors may take disciplinary action against any member:

(a) For violation by the member of any duty of membership.

(b) On a member being convicted, adjudged, or otherwise recorded as guilty by a final judgment of any court of competent jurisdiction of a felony or a crime involving moral turpitude; on a member being determined by a court of competent jurisdiction, or official of the State of ________________ (state) authorized to make the determination, as having violated a provision of the ________________ (state) real estate law or a regulation of the ______________ (state) real estate licensing authority; or on a final judgment or determination by a court of competent jurisdiction or by an authorized federal, state, or local official that a member has violated the federal, state, or local fair housing law. *(Revised 11/01)*

(c) For any act of any persons who are not themselves REALTORS® but are employed by or affiliated with a REALTOR®, and who provide real estate-related services within the scope of their or another's license. Lack of knowledge by the REALTOR® of such person's conduct shall go only to mitigation of discipline imposed. *(Revised 4/95)*

(d) For any act of another who is also a member, but is employed by or affiliated with the member as an independent contractor. In such an instance, the REALTOR® principal may be joined as a respondent by action of the complainant, by review of the Grievance Committee, or by determination of the Hearing Panel prior to commencement of the hearing based upon the facts of the complaint. If, however, the complaint is amended after the hearing has commenced, pursuant to **Part Four,** Section 21(f)(2), the REALTOR® principal who has been added to the complaint has the right to have the hearing reheard from the beginning by the same Hearing Panel or may waive this right. The finding of the Hearing Panel with respect to any violation of the REALTOR® principal and the other member employed by or affiliated with the REALTOR® principal as an independent contractor may be the same or different; and in the event both are found in violation, the sanctions, if any, may be the same or different.

In any proceeding where the REALTOR® principal is not joined in the complaint as a respondent, the respondent's REALTOR® principal has the right to be present during the proceeding without providing notice or may be required by the Hearing Panel to attend the hearing. The REALTOR® principal may make opening and closing statements on behalf of the respondent, examine and cross-examine parties and witnesses, introduce affidavits, documents, and other admissible relevant evidence, consult with or testify on behalf of the respondent, and respond directly to questions from the Hearing Panel. In all instances, the respondent's REALTOR® principal shall receive copies of the complaint and response, be provided with notice of the hearing, may be called by the parties or the Hearing Panel as a witness, and shall receive copies of the Hearing Panel's decision and recommendation for sanction, if any. If an appeal is required, the respondent's REALTOR® principal shall receive copies of the request(s), be provided with notice of the hearing, have the opportunity to be present, and receive a copy of the final action by the Directors. Such rights shall accrue to both the former REALTOR® principal and the current REALTOR® principal if the respondent REALTOR® or REALTOR ASSOCIATE® changes his firm affiliation either before or after a complaint is filed but before the Hearing Panel reaches its decision. *(Revised 05/18)*

*While most states recognize the enforceability of a prior agreement to arbitrate disputes, a few states prohibit an agreement to arbitrate until after the dispute has arisen and in a few instances such arbitration is not recognized at all (or at least is unenforceable by the court). Where such prohibition exists, Board (state) legal counsel should be consulted and the Manual modified accordingly. Arbitration conducted by Member Boards shall in all respects conform to the requirements of state law applicable to arbitration. If a member refuses to abide by an award in arbitration, enforcement of the award shall be accomplished only in the manner set forth in **Part Four,** Section 24 and **Part Ten,** Section 56 of this Manual.

In any proceeding where a REALTOR® principal is not joined in the complaint as a co-complainant, the complainant may, at their sole discretion, allow their REALTOR® principal to receive documentation related to the complaint and participate in the hearing as a witness or as counsel (consistent with **Part One,** Section 4 of this Manual).

(e) In the event the respondent named in any complaint alleging a violation of the Code of Ethics is involved in criminal or civil litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency in a matter arising out of the same facts and circumstances giving rise to the complaint alleging unethical conduct, the complaint may, at the discretion of the Grievance Committee, or on appeal, at the discretion of the Board of Directors, proceed to a hearing before a Hearing Panel of the Board's Professional Standards Committee. Board legal counsel should be consulted and the following factors shall be taken into consideration in determining whether the matter should proceed to a hearing or should be held in abeyance pending the conclusion of criminal or civil litigation or a proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency:

(1) the degree of similarity of factors giving rise to the pending litigation or regulatory or administrative proceeding and the ethics complaint

(2) the degree to which resolution of the litigation or regulatory or administrative proceeding may make consideration of the ethics complaint unnecessary

(3) the degree to which pending litigation or regulatory or administrative proceeding would delay prompt disposition of the ethics complaint

(4) the nature of the alleged violation and the extent to which it impacts on cooperation with other Board Members

(5) the assurance of Board legal counsel that consideration of the ethics complaint will not deprive the respondent of essential due process

If after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing, it is subsequently discovered that criminal or civil litigation or regulatory or administrative proceedings related to the same facts and circumstances giving rise to the complaint alleging unethical conduct are pending, the Hearing Panel Chair, in consultation with association legal counsel, will determine whether the hearing will proceed or, alternatively, whether the complaint will be held in abeyance pending resolution of the litigation or regulatory or administrative proceedings. *(Revised 11/18)*

Section 14. Nature of Discipline

Disciplinary action may consist only of one or more of the following. Refer to Appendix VII to **Part Four** of this Manual for sanctioning guidelines.

(a) Letter of Warning with copy to be placed in member's file;

(b) Letter of Reprimand with copy to be placed in member's file;

(c) Requirement that member attend the ethics portion of the Board Indoctrination Course or other appropriate course or seminar specified by the Hearing Panel which the respondent could reasonably attend taking into consideration cost, location, and duration;

(d) Appropriate and reasonable fine not to exceed $15,000 *(Revised 5/13)*;

(e) Membership of individual suspended for a stated period not less than thirty (30) days nor more than one (1) year with automatic reinstatement of membership in good standing at the end of the specified period of suspension. The thirty (30) day minimum and one (1) year maximum do not apply where suspension is imposed for a remediable violation of a membership duty (e.g., failure to pay dues or fees or failure to complete educational requirements). The Directors may order suspension unconditionally, or they may, at their discretion, give the disciplined member the option of paying to the Board, within such time as the Directors shall designate, an assessment in an amount fixed by the Directors, which may not exceed $15,000 and which can be utilized only once in any three (3) year period, in lieu of accepting suspension. But, if the conduct for which suspension is ordered consists of failure to submit a dispute to arbitration, the Directors may not permit the disciplined member to avoid suspension without submitting to the arbitration in addition to paying the assessment, unless in the meanwhile the dispute has been submitted to a court of law without any objection by any party that it should be arbitrated;* ** *(Revised 11/13)*

(f) Expulsion of individual from membership with no reinstatement privilege for a specified period of one (1) to three (3) years, with reinstatement of membership to be by application only after the specified period of expulsion, on the merits of the application at the time received (decision should be written clearly articulating all intended consequences, including denial of MLS participatory or access privileges); *(Revised 4/96)*

(g) Suspension or termination of MLS rights and privileges may also be utilized. Suspension of MLS services may be no less than thirty (30) days nor more than one (1) year; termination of MLS services shall be for a stated period of one (1) to three (3) years; *(Revised 5/02)*

(h) REALTORS® who participate in MLS or otherwise access MLS information through any Board or Association in which they do not hold membership are subject to the

*$15,000 is the maximum fine that may be assessed regardless of the number of Articles of the Code of Ethics that a member is determined to have violated in any given hearing. It is noted that a "reasonable and appropriate" fine may vary from $1 to $15,000 and should relate to the gravity of the offense and objective of the proposed sanction. *(Revised 5/13)*

Boards are advised that they should be guided by the provisions of **Part Four, Section 24, Initial Action by Directors, and **Part Ten,** Section 56, Enforcement, of this Manual. Judicial enforcement should be used to enforce any award in arbitration. *(Revised 9/87)*

Code of Ethics in that Board or Association on the same terms and conditions as Board members. Discipline that may be imposed may be the same as but shall not exceed the discipline that may be imposed on members. Boards entering into regional or reciprocal MLS agreements are encouraged to include provisions requiring signatory Boards to respect, to the extent feasible, decisions rendered by other Boards involving suspension or expulsion from membership or from MLS. *(Revised 4/96)*

(i) Members may also be required to cease or refrain from continued conduct deemed to be in violation of the Code, or to take affirmative steps to ensure compliance with the Code, within a time period to be determined by the hearing panel. Where discipline is imposed pursuant to this subsection, the decision should also include additional discipline (e.g., suspension or termination of membership) that will be imposed for failure to comply by the date specified, and to continue to comply for a specified period not to exceed three (3) years from the date of required compliance. *(Adopted 05/14)*

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. *(Revised 05/14)*

✍ In addition to any discipline imposed, Boards and Associations may, at their discretion, impose administrative processing fees not to exceed $500 against each respondent found in violation of the Code of Ethics or other membership duties. Any administrative processing fee will be in addition to, and not part of, any disciplinary sanction imposed. Boards and Associations shall determine in advance when, and under what circumstances, administrative processing fees will be imposed so that imposition is a matter of administrative routine. *(Revised 5/13)*

✍ Section 15. Selection and Appointment of the Grievance Committee

There will be a standing committee, known as the Grievance Committee, of at least ________________ Board Members, in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee). The Grievance Committee will hold regularly-scheduled meetings and/or review complaints/ arbitration requests not later than forty-five (45) days after receipt of the complaint/arbitration request. *(Revised 05/15)*

In selecting members of the Grievance Committee, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/ expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) law and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR ASSOCIATE®s, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. It is suggested that, to the extent practical, members of the Grievance Committee not serve simultaneously on the Professional Standards Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. *(Revised 11/96)*

Section 16. Selection and Appointment of the Professional Standards Committee

There shall be a Professional Standards Committee of at least ____________________ Board Members, in good standing, of ✍ whom at least a majority shall be REALTORS®, appointed by the President, subject to confirmation by the Board of Directors. Members of the Professional Standards Committee shall be selected to serve on Hearing Panels as required to hear matters of alleged unethical conduct by Board Members or to provide arbitration as requested. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

*In Boards with larger memberships, it is desirable for a larger committee to be named to avoid an overload of work upon any individual which could result from the greater number of hearings in these Boards. In such Boards, an uneven number of members from the Professional Standards Committee may be appointed to constitute a Hearing Panel for each case to be heard. *(Revised 11/92)*

In selecting members of the Professional Standards Committee, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR ASSOCIATE®s, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. It is suggested that, to the extent practical, members of the Professional Standards Committee not serve simultaneously on the Grievance Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. *(Revised 11/96)*

Part Three — The Grievance Committee in Ethics Proceedings

Section 17. Authority

The Grievance Committee is established in **Part Two,** Section 15 and **Part Eight,** Section 38 of this Manual, which provide in part:

✍ *There will be a standing committee, known as the Grievance Committee, of at least __________ Board Members in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

Section 18. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee makes decisions on matters involving ethics or arbitration. *(Revised 05/15)*

The Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee has meetings, it does not hold hearings, does not decide whether members have violated the Code of Ethics, and does not dismiss ethics complaints because of lack of evidence. Complainants are not required to prove their case upon submission of their ethics complaint or arbitration request. The Grievance Committee does not mediate or arbitrate business disputes. The Grievance Committee will hold regularly-scheduled meetings and/or review complaints not later than forty-five (45) days after receipt of the complaint. *(Revised 05/15)*

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a charge of having violated Article 14 of the Code of Ethics. (See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, **Part Six** of this Manual). In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, **Part Thirteen** of this Manual.) If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request. *(Revised 11/15)*

When Grievance Committees refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about

(1) whether ethics complaints and arbitration requests are timely filed,

(2) whether arbitrable issues exist,

(3) whether arbitration requests are too legally complex to be fairly arbitrated, and

(4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. *(Revised 05/14)*

Section 19. Grievance Committee's Review of an Ethics Complaint

A. *Initial action upon receipt of an ethics complaint*

Upon receipt of an ethics complaint from the Professional Standards Administrator, the Chairperson of the Grievance Committee shall review the complaint. Any evidence and documentation attached will be considered only to the extent necessary to determine whether a complaint will be referred for hearing. The Chairperson may assign one or more members of the Grievance Committee to review the complaint and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of from the complainant if additional information is necessary to determine whether a complaint will be referred for hearing. The complaint shall be provided to the assigned members by the Professional Standards Administrator upon instruction from the Chairperson. *(Amended 11/15)*

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Professional Standards Administrator to provide members of the Grievance Committee with copies of the case file including the reviewer's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting. *(Amended 4/94)*

B. *Consideration of an ethics complaint by the Grievance Committee*

In reviewing an ethics complaint, the Grievance Committee shall consider the following:

(1) Is the ethics complaint acceptable in form as received by the Committee? If not in proper form, the Chairperson may request that the Professional Standards Administrator contact the complainant to advise that the complaint must be submitted in proper form. *(Revised 11/15)*

NOTE: If deemed appropriate by the Chairperson, a member of the Grievance Committee may be assigned to contact the complainant and to provide procedural assistance to amend the complaint or resubmit a new complaint in proper form and with proper content. The Grievance Committee member providing such assistance shall ensure that only procedural assistance is provided to the complainant, and that the complainant understands that the member is not representing the complainant or advocating on behalf of the complainant. *(Revised 11/15)*

(2) Are all necessary parties named in the complaint?

(3) Was the complaint filed within one hundred eighty (180) days of the time that the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later? *(Revised 5/11)*

(4) Is the respondent named in the complaint a member of the Board, and was the respondent a member of any Board at the time of the alleged offense?

(5) Is criminal or civil litigation or any government agency investigation or other action pending related to the same facts and circumstances giving rise to the complaint alleging unethical conduct?

(a) If criminal or civil litigation is pending related to the facts and circumstances giving rise to the complaint alleging unethical conduct, the Grievance Committee shall instruct the Professional Standards Administrator to have Board legal counsel review the complaint filed and advise if any hearing should proceed (presuming the matter would otherwise warrant a hearing), with counsel considering the following:

(1) similarity of factors giving rise to pending litigation or regulatory or administrative proceeding and the ethics complaint

(2) degree to which resolution of the pending litigation or regulatory or administrative proceeding could make consideration of the ethics complaint unnecessary

(3) degree to which pending litigation or regulatory or administrative proceeding would delay prompt disposition of the ethics complaint

(4) the nature of the alleged violation and the extent to which it could impact on cooperation with other Board Members

(5) the assurance of Board legal counsel that consideration of an ethics complaint would not deprive the respondent of due process. *(Revised 11/18)*

(6) Is there any reason to conclude that the Board would be unable to provide an impartial Hearing Panel?

(7) Are the specific Articles cited in the complaint appropriate in light of the facts provided? Should additional Articles be cited? Should certain Standards of Practice be cited in support of the Articles charged? Are any inappropriate Articles cited?

(8) If the facts alleged in the complaint were taken as true on their face, is it possible that a violation of the Code of Ethics occurred? Complainants are not required to prove their case when initially filing an ethics complaint. A complaint may not be dismissed for lack of evidence if the allegation(s), taken as true on their face, could constitute a violation of the Code of Ethics and the complaint is in an otherwise acceptable form. *(Revised 11/15)*

If all relevant questions have been answered to the satisfaction of the Grievance Committee, and the allegations, if taken as true, could constitute a violation of the Code of Ethics, the Grievance Committee shall refer the complaint to the Professional Standards Committee for a hearing by an ethics Hearing Panel. *(Revised 11/15)*

C. *Appeal from the decision of the Grievance Committee related to an ethics complaint*

If the Grievance Committee dismisses the complaint, the notice of dismissal shall specify the reason(s) for dismissing and the complainant may appeal the dismissal to the Board of Directors within twenty (20) days from transmittal of the dismissal notice using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the complaint should be dismissed. If the Grievance Committee deletes an Article or Articles from an ethics complaint, the complainant may also appeal to the Board of Directors using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. The Directors (or a panel of Directors or the Executive Committee) shall consider only the information and documents considered by the Grievance Committee, together with the complainant's rationale for challenging the dismissal, and render its decision, which shall be final. The parties are not present at the meeting at which the appeal is considered. Appeals of dismissals shall be heard at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision. *(Revised 11/15)*

D. *Criminal or civil litigation or regulatory/administrative proceedings coming to light after an ethics complaint has been referred to an ethics Hearing Panel*

If after review of an ethics complaint by the Grievance Committee and referral of the complaint for hearing, it is subsequently discovered that criminal or civil litigation or regulatory or administrative proceedings related to the same transaction or event are pending, the Hearing Panel Chair, in consultation with association legal counsel, will determine whether the hearing will proceed or, alternatively, whether the complaint will be held in abeyance pending resolution of the litigation or regulatory or administrative proceedings. *(Revised 11/18)*

Part Four — The Ethics Hearing

Section 20. Initiating an Ethics Hearing

(a) Any person, whether a member or not, having reason to believe that a member is guilty of any conduct subject to disciplinary action, may file a complaint in writing in their own name with the Professional Standards Administrator, dated and signed by complainant, stating the facts on which it is based (Form #E-1, Complaint, **Part Six**), provided that the complaint is filed within one hundred eighty (180) days after the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later. *(Revised 11/22)*

Anonymous complaints other than those allowed for in the association's citation policy are prohibited. If the association's citation policy allows for anonymous complaints and the individual who brought the allegations chooses to remain anonymous, any complaint referred for hearing must include a complainant (e.g., a member of the Grievance Committee) to shoulder the burden of proof. *(Adopted 5/22)*

Suspension of filing deadlines: If the Board's informal dispute resolution processes (e.g., ombudsman, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to conduct that becomes the subject of a subsequent ethics complaint, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when informal dispute resolution began or ended will be determined by the Board President or the President's designee. The filing deadline shall also be suspended during any period when the respondent does not hold REALTOR® or REALTOR ASSOCIATE® membership. *(Amended 11/12)*

The Professional Standards Administrator shall promptly refer any complaint to the Chairperson of the Grievance Committee, who may designate one or more members of the Grievance Committee to review the complaint and report their findings to the Grievance Committee for its determination as to whether to (1) dismiss the complaint as unworthy of further consideration, (2) refer it back to the complainant as appropriate for arbitration rather than disciplinary action, or (3) refer it back to the Professional Standards Administrator to schedule for hearing. This review process may include additional information from the complainant other than the written complaint itself only if necessary to determine whether a complaint will be referred for hearing. The Grievance Committee may, if it thinks it appropriate, send a copy of the complaint to the party complained of and require the respondent to furnish it with a response before making its determination only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. (See Form #E-4, Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, **Part Six** of this Manual). In such an instance, the party complained of shall be advised that failure to respond to the Grievance Committee's request may result in the complaint being forwarded for a hearing and may subject the respondent to a charge of having violated Article 14 for failing to submit pertinent facts to an appropriate tribunal. The function of the Grievance Committee is to make only such preliminary review and evaluation of the complaint as are required to determine whether the complaint warrants further consideration by a Hearing Panel of the Professional Standards Committee. If the facts alleged in the complaint could constitute a violation of the Code of Ethics, if taken as true on their face, the Grievance Committee is obligated to make a referral for hearing if the complaint is otherwise in acceptable form. The Grievance Committee does not conduct hearings, does not determine if a violation of the Code of Ethics has occurred, and does not dismiss ethics complaints because of lack of evidence. A complainant is not required to prove their case upon submission of their ethics complaint. *(Revised 11/15)*

When Grievance Committees refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about

(1) whether ethics complaints and arbitration requests are timely filed,

(2) whether arbitrable issues exist,

(3) whether arbitration requests are too legally complex to be fairly arbitrated, and

(4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. *(Revised 05/14)*

In the event the complaint is from a client, customer, or a member of the general public, and the Grievance Committee determines that the complaint is vague, overly general, does not allege violations of specific Articles, or is otherwise insufficient on its face, a member of the Grievance Committee may be assigned by the Chairperson of the Grievance Committee to assist the complainant in preparing the complaint in proper form. The member providing such assistance shall not participate in any consideration or deliberations of the Grievance Committee with respect to the matter and are not and will not act as the complainant's advocate or representative. In such cases, the respondent shall receive the revised complaint with the original complaint and all other supporting documentation provided by the complainant incorporated as an appendix. *(Revised 11/14)*

(b) Upon its own motion the Grievance Committee may, and upon instruction of the Directors must, review the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action, and, if the evidence of unethical conduct warrants a hearing, shall prepare a complaint, refer it to the Professional Standards Administrator, and designate one of its members to present the case at the subsequent hearing on its behalf as complainant. However, no member of the Grievance Committee shall serve as a member of the Hearing Panel. *(Revised 4/94)*

(c) Any action by the Grievance Committee dismissing the complaint as unworthy of further consideration may be appealed to the Board of Directors within twenty (20) days from transmittal of the dismissal notice using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint. The materials and information which were available to the Grievance Committee when the committee made its decision will be presented to the Directors and considered with the appeal. The complainant and respondent do not have the right to appear at the hearing before the Directors. The complaint and any attachments to the complaint may not be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the complaint should be dismissed. Appeals of dismissals shall be heard at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after receipt of the appeal. The Directors' decision will be transmitted to the parties within five (5) days from the date of the decision. If the Directors determine that the complaint or portions of the complaint were improperly dismissed by the Grievance Committee, they shall refer the complaint or the appropriate portions of the complaint to the Professional Standards Committee for a hearing. If referred for hearing, the Professional Standards Administrator shall at that time provide a copy of the response to the complainant if one had been submitted for review by the Grievance Committee. *(Revised 11/15)*

✍ The President may appoint a panel of Directors, acting on behalf of the Board of Directors, to hear the appeal. Any appeal panel so appointed must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or the Executive Committee) is final and binding and is not subject to further review by the Board of Directors. *(Revised 11/91)*

(d) If the complaint asserts multiple allegations of unethical conduct and the Grievance Committee determines that one or more of the allegations would not, under any circumstances, constitute a violation, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing before a Hearing Panel of the Professional Standards Committee. However, the complainant has the right to appeal the dismissal to the Board of Directors using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint. The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's dismissal. *(Revised 5/06)*

If the Grievance Committee feels that the respondent's alleged conduct may be the basis for a violation but that an inappropriate Article(s) has been cited, or that other applicable Articles have not been cited, the Grievance Committee may amend the complaint by deleting any inappropriate Article(s) and/or by adding any appropriate Article(s) and/or individuals to the complaint. If the complainant disagrees with the deletion of an Article(s) from the complaint, the complainant may appeal to the Board of Directors requesting that the original complaint be forwarded to a Hearing Panel as filed using Form #E-22, Appeal of Grievance Committee Dismissal of Ethics Complaint. The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's dismissal. If the Grievance Committee determines that an Article(s) or an additional respondent(s) should be added to the complaint and the complainant will not agree to the addition, the Grievance Committee may file its own complaint and both complaints will be heard simultaneously by the same Hearing Panel. *(Revised 11/22)*

(e) If an ethics respondent resigns or otherwise causes membership in the Board to terminate after an ethics complaint is filed but before final action is taken by the Board of Directors, the Professional Standards Administrator shall cause the complaint to be forwarded to any other Board in which the respondent continues to hold membership. If the respondent does not hold membership in another Board, or if the Professional Standards Administrator is unable to determine if the respondent holds membership in another Board, the complaint shall continue to be processed until the decision of the association with respect to disposition of the complaint is final consistent with Section 20, Initiating an Ethics Hearing, or Section 23, Action of the Board of Directors, *Code of Ethics and Arbitration Manual*.* If an ethics respondent resigns or otherwise causes membership in all Boards to terminate before an ethics complaint is filed alleging unethical conduct occurred while the respondent was a REALTOR®, the complaint, once filed, shall be processed until the decision of the association with respect to disposition of the complaint is final consistent with Section 20, Initiating an Ethics Hearing, or Section 23, Action of the Board of Directors, *Code of Ethics and Arbitration Manual*.* In any instance where an ethics hearing is held subsequent to

*Failure of the respondent to attend will not prevent a hearing from being held.

an ethics respondent's resignation or membership termination, any discipline ratified by the Board of Directors shall be held in abeyance until such time as the respondent rejoins an association of REALTORS®. In any instance where a complaint is transferred to another Board, the complainant shall be so advised. *(Revised 5/16)*

✍ NOTE: Adoption of the following expedited ethics administration procedures (Sections 20 [f-q]), is at the option of each Member Board.

(f) Any person, whether a member or not, having reason to believe that a member is guilty of any conduct subject to disciplinary action, may file a complaint in writing with the Professional Standards Administrator, dated and signed by the complainant, stating the facts on which it is based (Form #1, Complaint, **Part Nine**); provided, however, that the complaint must be filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence. *(Revised 11/97)*

(g) Any complaint alleging a violation of the Code of Ethics by a Board Member or by any other person subject to the disciplinary authority of the Board, will be scheduled for review by the Grievance Committee (or by a panel thereof) at the next regular meeting. It will be a matter of local determination whether responses will be sought or accepted in instances where these optional enforcement procedures are utilized. *(Revised 11/04)*

(h) If the Grievance Committee concludes that the complaint is vague, overly general, does not allege violations of specific Article(s), or is otherwise insufficient on its face, the complaint shall be referred back to the complainant accompanied by the Grievance Committee's initial conclusions. The complainant shall be free to refile an amended complaint.

(i) If the Grievance Committee concludes that the allegations in the complaint, if taken as true, could not support a finding that the Code of Ethics had been violated, then the complaint shall be dismissed and the complainant advised of the dismissal and of their right to appeal the dismissal to the Board of Directors using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. The complaint and any attachments to the complaint cannot be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the complaint should be dismissed. *(Revised 5/06)*

(j) If the Grievance Committee concludes that the complaint alleges conduct which, if taken as true, could support a possible violation of the Code of Ethics, then staff or counsel, or in the absence of staff or counsel, the Grievance Committee Chairperson will ascertain whether or not there were any prior violations of the Code of Ethics in the past three (3) years. The complaint will then be sent to the respondent together with a response form (Form #E-20, Notice to Respondent [Ethics] and Optional Waiver of Right to Hearing), which will advise the respondent of the complaint; which will ask the respondent to affirm that the respondent has not been found in violation of the Code of Ethics by any Board within the past three (3) years; which will give the respondent an opportunity to waive the right to a hearing by acknowledging the conduct alleged in the complaint and by agreeing to accept discipline which will not exceed a fine in excess of $15,000 or suspension for a period of thirty (30) days should a violation of the Code ultimately be determined. Any response provided cannot contest the facts stated in the complaint but may offer information in mitigation of any discipline that might be imposed. *(Revised 05/14)*

Notwithstanding the foregoing, in the event the members of the Grievance Committee determine the conduct described in the complaint is sufficiently egregious (e.g., public trust issues) to warrant a hearing rather than a waiver to a right to a hearing, the complaint shall be referred to the Professional Standards Committee for hearing consistent with the policies and procedures set forth in the *Code of Ethics and Arbitration Manual* for ethics hearings. *(Adopted 5/22)*

(k) Alternatively, the respondent has the right to a hearing pursuant to the procedures established in **Part Four** of this Manual.

(l) If the respondent does not acknowledge the conduct alleged in the complaint or waive the right to a hearing, or does not respond within ten (10) days from transmittal of the complaint, a hearing shall be scheduled in the manner provided for in Section 21, Ethics Hearing, beginning with the five (5) day deadline for the Professional Standards Committee chair to select a hearing date. *(Revised 5/16)*

(m) If the respondent waives the right to a hearing and acknowledges the conduct alleged in the complaint, such elections will be affirmatively indicated on the response form which shall be returned to the Grievance Committee Chairperson (or staff or counsel) within ten (10) days from transmittal of the complaint to the respondent. The Grievance Committee Chairperson (or staff or counsel) will verify the respondent's assertions as to prior violations in the past three (3) years. In the absence of any prior violation within the past three (3) year period, the complaint will be referred to a panel of the Professional Standards Committee for consideration within thirty (30) days. The panel shall be appointed pursuant to the procedures established elsewhere in this Manual. *(Revised 11/14)*

(n) The panel of the Professional Standards Committee will meet in executive session. Neither the complainant nor the respondent will be present. Board staff and counsel will be present as deemed necessary by the Chairperson. The initial question to be determined by the panel will be whether the allegations in the complaint, as acknowledged and agreed to by the respondent, support a violation of one or more of the Articles of the Code of Ethics. The panel shall prepare a brief, concise decision which shall include findings of fact, conclusions, and a recommendation for discipline if a violation is found. Discipline that may be imposed, if a violation is determined, may only include one or more of the following: letter of warning or reprimand, mandatory attendance at a relevant educational program, suspension for thirty (30) days, or a fine not in excess of $15,000. In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. *(Revised 11/14)*

(o) The decision of the panel will be filed with the Professional Standards Administrator the day of the hearing, or no later than forty-eight (48) hours following the hearing.* The procedures for dissemination of the decision shall be those in Section 22(b), Decision of a Hearing Panel. Appeals of decisions shall be pursuant to Section 23, Action of the Board of Directors, of this Manual. *(Revised 11/14)*

(p) The expedited Code enforcement procedures established in the *Code of Ethics and Arbitration Manual* are available only to REALTORS® holding primary or secondary membership in the Board enforcing the Code or other membership duties and are not available to REALTORS® who become subject to the Code of Ethics or other membership duties pursuant to their participation in or access to MLS under board of choice. *(Adopted 11/96)*

(q) Where an ethics complaint names more than one respondent, the expedited Code enforcement procedures are available only when all respondents are eligible and all respondents elect to utilize these procedures. *(Adopted 11/98)*

Section 21. Ethics Hearing

(a) After a complaint alleging a violation of membership duty (duties) has been referred to the Professional Standards Administrator by the Grievance Committee with instruction to arrange a hearing, the Professional Standards Administrator shall serve a copy of the complaint on each party complained of (hereafter called the respondent) and notify the respondent that the respondent may file a written reply (Forms #E-2, Notice to Respondent [Ethics], and #E-3, Reply [Ethics], **Part Six**) with the Professional Standards Administrator within fifteen (15) days of the request for response being transmitted. A Hearing Panel may accept late filing of the reply at its discretion. The Professional Standards Administrator may require the complainant to supply the necessary number of copies of the complaint and the respondent to supply the necessary number of copies of the reply, except that such requirement shall not be made of a complainant who is not a Board Member. *(Revised 11/14)*

The Professional Standards Administrator will inform the Professional Standards Committee Chair of the referral and the Chair shall select a hearing date no later than five (5) days after the Grievance Committee's decision to forward for hearing is final. *(Revised 5/16)*

*The Hearing Panel's decision shall be considered final only when it is in writing and signed by members of the panel following their personal review and any review by legal counsel which may be required.

(b) The Professional Standards Administrator shall provide a copy of the reply (if any) to the complainant within five (5) days from receipt of the response. The Professional Standards Administrator shall also provide copies of the complaint and reply (if any) to the Chairperson of the Professional Standards Committee, or notify the Chairperson that no reply has been filed (unless the Professional Standards Chairperson indicates that they do not wish to receive copies or be so informed). *(Amended 11/22)*

(c) The Professional Standards Administrator shall, concurrently with the notification that the ethics complaint has been referred for hearing, transmit to each of the parties a list of the names of members of the Professional Standards Committee (See **Part One**, Section 2, (a) through (f), Qualification for Tribunal, **Part Six**, Form #E-6, Notice of Right to Challenge Tribunal Members, and Form #E-7, Challenge to Qualification by Parties to Panel Members). If a party challenges one or more members, the challenge form must be returned to the Professional Standards Administrator no later than ten (10) days after the date the challenge forms were transmitted to the party. No later than five (5) days after the challenge forms are due, the Professional Standards Committee Chairperson shall appoint, from the names not successfully challenged by either party, three (3) or more members for a Hearing Panel, a majority of whom shall be REALTORS®. The Chairperson shall also select one of the panel members to serve as Chairperson of the Hearing Panel. Any Hearing Panel must have an odd number of members. If the complainant or respondent is a REALTOR ASSOCIATE® or a REALTOR® other than a principal, at least one member of the Hearing Panel shall be a REALTOR ASSOCIATE® or a REALTOR® other than a principal. It shall be a membership duty of anyone so appointed to serve on the Hearing Panel unless disqualified. A party will be deemed to have waived all objections to any person whose name is not challenged. If challenge to members of the Professional Standards Committee results in an insufficient number of members to constitute a panel, the President may appoint other qualified Board Members to serve as panel members. The Chairperson of the Professional Standards Committee (or the Hearing Panel itself) shall designate the time and place of the hearing, and the Professional Standards Administrator shall notify the complainant and the respondent (Form #E-8, Official Notice of Hearing, **Part Six**) minimally twenty-one (21) days before the hearing.* An appearance at a hearing without objection by a party will constitute a waiver of any defective notice of hearing. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the request for continuance would deny the requestor a fair hearing. *(Revised 11/14)*

(d) The Chairperson of the panel shall prescribe any procedure for the hearing not inconsistent with these provisions.**

*Form #E-9, Outline of Procedure for Ethics Hearing, **Part Six,** should accompany the Official Notice of Hearing or be otherwise provided to the parties prior to the hearing.

See **Part Five, Conduct of an Ethics Hearing.

(e) Complainants may withdraw their complaints at any time prior to adjournment of the ethics hearing. However, if complainant withdraws the complaint after transmission of the Grievance Committee's decision to forward the complaint to a hearing and prior to adjournment of the ethics hearing, the complainant may not resubmit the complaint on the same matter. If complainant withdraws the complaint before transmission of the Grievance Committee's decision to forward the complaint to a hearing, the complainant may resubmit the complaint on the same matter so long as it is filed within the 180-day filing deadline as defined in this Manual. If a complaint is withdrawn by the complainant after the Grievance Committee determines the complaint requires a hearing, it will be referred back to the Grievance Committee to determine whether a potential violation of the public trust (as defined in Article IV, Section 2 of the National Association's Bylaws) may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. *(Amended 5/16)*

The complaint, and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be ✍ ____________ (as determined by the Board of Directors) and shall be adhered to for all hearings. *(Amended 4/91)*

(f) Amendment of complaint:

(1) At any time prior to the hearing of the complaint, the complainant may file an amended complaint with the Professional Standards Administrator (excluding amendments pertaining to an Article previously dismissed by the Grievance Committee relating to previously charged respondents). If an amended complaint, including facts upon which the amendment is based, is filed prior to the hearing, the respondent shall be notified, given a copy, and provided the opportunity to file an amended response. At any time prior to the hearing of the complaint, the Hearing Panel may name the REALTOR® principal as a respondent. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties. *(Revised 5/20)*

(2) At any time during the hearing, the complaint may be amended either by the complainant or upon motion of the Hearing Panel to add previously uncited Articles or additional respondents, including facts upon which those amendments are based. Neither the complainant nor the Hearing Panel may bar the other from making such amendments. Amendments to include Articles previously dismissed by the Grievance Committee may be made only on the motion of the Hearing Panel. In such event, the hearing, with the concurrence of the respondent, may proceed uninterrupted or be reconvened on a date certain, not less than fifteen (15) or more than thirty (30) days from the hearing date unless a "late" witness is allowed and then not less than five (5) days from the hearing date. If the respondent knowingly waives his right to the adjournment, the record should reflect the fact that the respondent was aware of the right to an adjournment but chose to proceed with the hearing without interruption on the basis of the amended complaint. If the hearing is adjourned to be reconvened at a later time, the amended complaint shall be filed in writing, signed by the complainant or by the Chairperson of the Hearing Panel, and shall be promptly served on the respondent as in all other cases provided herein. However, in any instance where a Hearing Panel amends an ethics complaint pending before it, the respondent(s) shall be given the choice of proceeding before the same Hearing Panel (either without interruption or when reconvened pursuant to the procedures established elsewhere in this Section) or having the complaint considered in a new hearing before a different Hearing Panel. *(Amended 5/20)*

To prevent the appearance of bias, at no time during or after an ethics hearing may the Hearing Panel or any appellate body refer concerns regarding potentially unethical conduct to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. This prohibition in no way limits or restricts the Hearing Panel from amending pending complaints as otherwise provided for in this section. *(Amended 11/16)*

(3) In the event that the complaint scheduled for a hearing is from a member of the public who refuses or is unable to attend the hearing and who has not requested a continuance in writing or who has not been granted a continuance, the complaint shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., that there is clear, strong, and convincing proof), the complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such cases. *(Revised 5/12)*

If the Grievance Committee determines that there is insufficient information for a Hearing Panel to consider, the complaint shall be dismissed.

In the event the complaint scheduled for hearing is from a REALTOR® or REALTOR ASSOCIATE® who has not requested a continuance in writing or who has not been granted a continuance, and who refuses or is unable to attend the hearing, the complainant shall be advised that refusal to participate in the hearing, absent a satisfactory reason, may result in a charge that the complainant has violated Article 14's obligation to place all pertinent facts before an appropriate tribunal of the Board. *(Revised 5/12)*

If the REALTOR® or REALTOR ASSOCIATE® complainant continues to refuse a duly noticed request to appear, or if the complainant is excused from appearing for reasons deemed valid by the Hearing Panel, the hearing shall not take place, but rather the complaint shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., that there is clear, strong, and convincing proof), the complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such cases. *(Revised 11/98)*

(g) In the event that the respondent fails to appear at a duly noticed hearing without first obtaining a continuance or adjournment thereof, the Hearing Panel may proceed with the hearing in the respondent's absence and shall reach its decision based on the evidence made available at the hearing. Thereafter, all other procedures shall follow as hereinafter provided.

Where an ethics hearing takes place in a respondent's absence, the respondent is still entitled to be represented by counsel. Counsel may make opening and closing statements, call witnesses, cross-examine witnesses called by other parties, and introduce affidavits, documents, and other admissible relevant evidence. Counsel may not testify to events and facts of which counsel has no first hand knowledge. Hearing Panels should be instructed by the Chair that counsel's arguments do not constitute testimony. *(Adopted 5/99)*

(h) Upon notice by the Professional Standards Administrator, the parties shall with diligence present to the panelists in writing such statements and proof which they deem necessary to support their positions. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the panelists shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings.* The Hearing Panel may receive and consider any evidence it deems material and proper, including evidence of experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to the ethics complaint shall be entitled to have counsel present at any hearing. Each party is responsible for the expenses of his respective counsel. *(Adopted 11/96)*

Section 22. Decision of Hearing Panel

(a) The decision of the Hearing Panel shall be by a simple majority vote and in writing (Form #E-11, Decision [Ethics], **Part Six** and the Professional Standards Training Guide) and shall contain findings of fact and a statement of the disciplinary action recommended, if any. Under no circumstances can the Board award money "damages" in an ethics proceeding. The decision shall include a clear, concise, and objective recitation of the specific facts upon which the Hearing Panel based its conclusion. Such decision shall not be disclosed during the ethics proceeding, or any appeal, to any persons except the Directors, the complainant, the respondent, Board legal counsel, and the Professional Standards Administrator. However, failure of confidentiality shall not invalidate the decision. The decision shall be filed with the Professional Standards Administrator the day of the hearing, or no later than forty-eight (48) hours following the hearing.** *(Revised 11/14)*

Copies of the decisions disseminated pursuant to these procedures shall be complete and unedited unless an Association, by affirmative action of its Board of Directors, adopts procedures under which decisions presented to the Board of Directors for ratification will not include the names of the parties. In the event the respondent is found in violation, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Board or Association, in the member's file in determining discipline, and the rationale for the current disciplinary action can be provided to the parties and the Directors as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel). *(Amended 5/17)*

(b) The Professional Standards Administrator shall transmit a copy of the decision to the complainant and respondent within five (5) days after the Professional Standards Administrator has received the Hearing Panel's decision in writing, except that reasonable delay shall not invalidate the Board's procedures nor the decision (e.g., when it is necessary to obtain association counsel's review). *(Revised 11/14)*

(c) To avoid any appearance of bias, ethics Hearing Panels shall make no referrals of ethical concerns to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. *(Adopted 11/96)*

Section 23. Action of the Board of Directors

(a) Within twenty (20) days after the Hearing Panel's final decision has been transmitted, the complainant or the respondent may file an appeal with the President.*** *(Revised 11/14)*

(b) If no appeal is filed, the Directors will adopt the Hearing Panel's recommendation and issue its order accordingly (at its next

*Such hearings should be conducted according to **Part Five,** Conduct of an Ethics Hearing.

**The Hearing Panel's decision shall be considered final only when it is in writing and signed by members of the panel following their personal review and any review by legal counsel which may be required.

***Appeal is provided only from decisions rendered in hearings of alleged unethical conduct, and not from the decision of an arbitration panel. However, the Board of Directors reserves the right to review procedures of any ethics or arbitration hearing to ensure compliance with the governing documents of the Board and to rule thereon; and in arbitration hearings, a limited form of appeal is provided only in respect of alleged irregularities related to the arbitration as are alleged to have deprived the party of due process.

regularly scheduled meeting or a special meeting designated for that purpose, but no later than thirty [30] days after the date the Hearing Panel's decision was transmitted to the parties), unless: *(Revised 11/14)*

(1) the Directors, if concerned with a possible procedural deficiency, refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel; or

(2) the Directors are concerned with the appropriateness of the recommendation of sanction, in which case the Directors may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Directors' concerns regarding the proposed discipline (Hearing Panels are not required to accept the Directors' recommendation to increase discipline. In instances where the Hearing Panel increases discipline, the respondent(s) will have an additional twenty (20) days from the date the Hearing Panel's revised decision has been transmitted to appeal the revised discipline); or *(Revised 11/16)*

(3) the consequences for noncompliance with discipline are not specified, in which case the Directors must refer the decision back to the original Hearing Panel for determination of the consequences for noncompliance (in such instances, the respondent(s) will have an additional twenty (20) days from the date the Hearing Panel's revised decision has been transmitted to appeal only the severity of the consequences for noncompliance); or *(Adopted 5/16)*

(4) the Directors conclude the findings of fact do not support a violation of the Code of Ethics, in which case the complaint will be dismissed.

In such matters, advice of Board legal counsel should be requested and considered. *(Revised 11/14)*

(c) All appeals must be in writing and must be accompanied by a deposit with the President in the sum of $________ (not to exceed $500). In cases where a single appeal is filed jointly by more than one party, only one filing fee may be assessed. The appeal should clearly indicate the bases on which the Hearing Panel's decision and/or recommendation for discipline is being challenged — (1) misapplication or misinterpretation of an Article(s) of the Code of Ethics; (2) procedural deficiency or any lack of procedural due process; (3) the discipline recommended by the Hearing Panel — and set forth in reasonable detail the facts and evidence to support the bases cited. The complainant may appeal based only on alleged procedural deficiencies or other lack of procedural due process that may have deprived him of the opportunity for a full and fair hearing. The written request for appeal shall be reviewed within ten (10) days after the appeal was transmitted to the Association by the Board President or the President's designee only for the purpose of determining whether the appeal states any legitimate basis for consideration by the Board of Directors. If determined to be insufficient, it shall be returned to the appellant accompanied by an explanation and a request for additional detail to be received by the Board within ten (10) days of notice. This initial administrative review is not a decision on the merits of the appeal request but is only intended to ensure compliance with the requirement that an appeal clearly set forth all bases that will be presented to the Board of Directors for their consideration. All requests for appeals received by the Board must be considered by the Board of Directors, and only those bases and issues raised in the written request for appeal may be raised by the appellant in any hearing before the Board of Directors. *(Amended 11/14)*

(d) When a request for appeal (as originally filed if in proper form, or as originally filed if no amendment is submitted, or as amended even if still deemed to be lacking) is received, the Professional Standards Administrator shall, within one (1) day, as originally filed or as amended, send a copy to the other party, notify all parties at least ten (10) days in advance of the time and place of hearing by the Directors (including challenge Forms #E-6 and #E-7, **Part Six** of this Manual), and bring the matter before the Directors for hearing at their next regular meeting or at a special meeting called by the Professional Standards Administrator for the purpose, but no later than thirty (30) days after the date of receipt of the appeal. The Professional Standards Administrator shall provide to the Directors in advance of the hearing, copies of the complaint, response, the Hearing Panel's findings of fact and recommendation of discipline, if any, the President's correspondence, if any, and the appeal request or amended appeal request, if any. The Directors shall be advised that the information is confidential and not to be discussed with others at any time. *(Revised 11/14)*

(e) At the hearing before the Directors, the Chairperson of the Hearing Panel (or the Chairperson's designee) shall present a transcript of the case or, if there is no transcript, shall summarize the case. Either party shall be entitled to offer corrections to the summary. Either party may present to the Directors reasons why the Hearing Panel's recommendation should be followed or not, but no new evidence shall be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal shall be determined on the transcript or summary. *(Amended 5/09)*

(f) The Directors shall transmit their written decision within five (5) days of the appeal hearing. Their decision may be to adopt or modify the recommendation of the Hearing Panel, including the discipline proposed, or the Directors will dismiss the matter if they conclude the findings of fact do not support the Hearing Panel's conclusion as to unethical conduct. The Directors, if concerned with a substantial procedural deficiency, shall refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a different Hearing Panel. If, however, the Directors are concerned with the appropriateness of the recommendation of sanction, they may impose alternative discipline that does not exceed that recommended by the Hearing Panel, or may refer the decision back to the original Hearing Panel for further consideration and recommendation accompanied by the Directors' concerns regarding the proposed discipline. In such matters, the advice of Board legal counsel should be requested and considered. *(Amended 05/15)*

(g) If the recommendation of the Hearing Panel is adopted, the money deposited by the appellant shall pass into the general treasury of the Board. If the recommendation is rejected, the deposit shall be returned to the party who made the deposit. If the recommendation is modified, the Directors shall determine the disposition of the deposit.

(h) If the recommendation of the Hearing Panel is modified, or if the charge is dismissed, the Directors shall state their reasons in writing, but failure to do so shall not invalidate the decision of the Directors. Under no circumstances may the discipline exceed that recommended by the Hearing Panel. *(Revised 5/17)*

(i) The decision of the Directors is final, and each member, by becoming and remaining a member, agrees not to seek review in any court of law in the absence of willful or wanton misconduct.

(j) Upon final action by the Directors, the Professional Standards Administrator shall disseminate to the complainant, the respondent, the Chairperson and members of the Hearing Panel, Association legal counsel, the Professional Standards Administrator of any other Association in which the respondent holds membership, and any governmental agency as directed by the Board of Directors such notice of the action as the President deems appropriate under the circumstances provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Association legal counsel prior to dissemination. *(Revised 11/22)*

Association Members, other than those specified, shall not be notified except with respect to suspension or expulsion of membership of the Association Member, or unless one of the publication options in Professional Standards Policy Statement 45, Publishing the Names of Code of Ethics Violators, has been adopted, or unless notification is required to ensure compliance with the Association's bylaws (e.g., where a petition for removal of an officer or director must state the reason(s) an officer or director is deemed disqualified from further service). *(Revised 05/18)*

Final ethics decisions holding REALTORS® in violation of the Code of Ethics involving real estate related activities and transactions must be forwarded to the state real estate licensing authority, and may be forwarded to any other governmental agency, in instances where there is reason to believe that the public trust may have been violated. The "public trust," as used in this context, refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. *(Revised 11/20)*

NOTE: Associations are encouraged to publish periodic Code Enforcement Activity Reports specifying the number of complaints filed for the given period, the Articles of the Code of Ethics charged, the number of complaints dismissed by the Grievance Committee, the number of violations of particular Articles, the number of cases resulting in violations or, conversely, no violations, the number of cases in which sanctions were imposed, the range of sanctions imposed, and other appropriate information. (See Form #E-17, Ethics Activity Report).

With respect to arbitration, such report could include the number of arbitration requests received, the number of arbitration requests dismissed without hearing, the number of mediations conducted, the number of arbitration hearings held, and other relevant information, provided that no Code Enforcement Activity Report shall include the names of individuals or firms. *(Revised 11/00)*

(k) Any discipline imposed that requires an action on the part of the disciplined member should also indicate any additional penalties that may be automatically invoked for failure to comply by the date specified. In the absence of such a provision, failure to comply with the discipline imposed should not be considered grounds for an additional ethics hearing, but rather should constitute the basis for consideration by the Board of Directors with regard to any additional action required to ensure compliance with the original discipline imposed. In the event that additional penalties are contemplated, the party failing to comply with the discipline originally imposed should have the opportunity to appear before the Board of Directors to explain the failure to comply. Absent an explanation acceptable to the Directors, additional discipline, including possible suspension or expulsion from membership, may be imposed in a manner consistent with the procedures established in the *Code of Ethics and Arbitration Manual* of the Board, and the notice of the Directors should include a date by which any proposed discipline will be imposed or by which implementation of sanction shall automatically occur.

(l) If the respondent is currently on probation as the result of an earlier proceeding, the Directors, upon reviewing the findings of fact and recommendation for discipline resulting from the subsequent hearing, shall also determine whether to impose the discipline that was held in abeyance during the probationary period. The Directors shall consider whether the subsequent ethics violation occurring during the probationary period was minor, inadvertent, or otherwise unrelated to the original violation in making their determination. *(Adopted 5/87)*

(m) Appeals to the Board of Directors may be heard by a panel of Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute such an appeal panel, which shall act on behalf of the Board of Directors. The decision of the appeal panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the Board of Directors. *(Revised 11/91)*

Section 24. Initial Action by Directors

If the complainant alleges that a member has improperly refused to submit a dispute to arbitration (or mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation in violation of Article 17. *(Revised 11/11)*

There can be no charge that there has been a refusal to arbitrate (or mediate if required by the Board) until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration or mediation before the Board. *(Revised 11/11)*

✍ Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration or mediation, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate or mediate. A refusal to abide by an award in arbitration or any resulting agreement in mediation should be enforced in the manner set forth in **Part Ten,** Section 56, Enforcement.* *(Revised 11/11)*

*Refer to Appendix III to **Part Ten** for the rationale for use of judicial enforcement of arbitration awards when a Board Member refuses to pay an award in arbitration.

Section 25. Preliminary Judicial Determination Prior to Imposition of Discipline

If the Board of Directors has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Board for declaratory relief declaring that the discipline proposed violates no rights of the member.**

Refer to Rationale of Declaratory Relief Procedure provided in Appendix IV to **Part Four.

Appendix I to Part Four

Rationale for the Board of Directors Reviewing and Ratifying Ethics Decisions

Alleged violations of the Code of Ethics are considered by Hearing Panels of the Professional Standards Committee of the Board or Association having jurisdiction. **Part Four** of the *Code of Ethics and Arbitration Manual* provides that the decision of the Hearing Panel will be made by a majority vote and will be in writing, containing findings of fact, conclusions, and any discipline proposed. *(Revised 5/17)*

The decisions of ethics Hearing Panels are actually recommendations to the Board of Directors. They also serve as the basis on which the Hearing Panel's decision can be appealed.

Even where no appeal is filed, the Hearing Panel's decision must be provided to the Board of Directors for their review and ratification. The Directors are not required to adopt a Hearing Panel's decision, even if the decision is not appealed. The procedures establish when and how a decision can be modified, sent back to the Hearing Panel, or sent to a new Hearing Panel.

A frequent question is how the Directors can be concerned about the adequacy of the procedures by which a hearing was conducted if no appeal is filed. Some argue the Board of Directors should be required to adopt all decisions that aren't appealed or that decisions not appealed should be final and binding without any action by the Board of Directors because the Directors don't have the benefit of the in-person testimony and evidence the Hearing Panel had.

Questions arise as to how the Directors can legitimately be concerned about a possible failure of due process without an appeal being filed or without listening to a recording or reviewing a written transcription of the entire hearing. Questions also arise regarding the severity of discipline recommended by Hearing Panels and the appropriateness of Directors' involvement suggesting that discipline be increased or decreased in severity.

There are sound, fundamental reasons for decisions (even if not appealed) being acted on by the Directors.

First, the Board of Directors has the ultimate responsibility for ensuring the rights of members are safeguarded and that the Association is operated in a legally defensible manner consistent with its governing documents.

Second, it is not always possible to ensure absolute impartiality in every professional standards proceeding. At times facts may come to light calling into question the impartiality of a Hearing Panel, or whether the parties received a fair, due process hearing. These concerns arise through threats of litigation made against the association, and while a court might direct a respondent-plaintiff to exercise the appeal remedy available through the association prior to filing a lawsuit against the association, dismissal of a legal challenge is not a certainty, particularly if the respondent-plaintiff can argue that the association's appeal remedy, though available, would result in a predetermined or sham conclusion. The procedural safeguards built into the *Code of Ethics and Arbitration Manual* provide associations with a simple way to correct mistakes without expending their human and financial resources on unnecessary litigation. In other words, the Directors' review provides associations with an internal, administrative "safety valve" to correct mistakes, particularly serious procedural mistakes, without becoming involved in litigation.

Third, in certain instances, the Directors may reasonably be concerned about the severity of discipline proposed by a Hearing Panel without knowing all the hearing details. For example, where a violation of the Code is a REALTOR®'s first, and the findings of fact demonstrate that only a minor violation occurred, likely the result of inadvertence or ignorance rather than gross negligence or intentional misconduct, and the proposed discipline is suspension or expulsion from membership, the Directors may be reasonably concerned about the severity of the proposed discipline. On the other hand, if the violation is part of a pattern of repeated unethical conduct and the findings of fact show the violation is serious but the discipline recommended is relatively insubstantial, the Directors might be reasonably concerned about the severity of the proposed discipline and could recommend to the Hearing Panel that the discipline be increased. In neither of these scenarios would the Directors need to refer to the transcript or the recording of the hearing to be legitimately concerned.

Last, in some cases, Directors can be frustrated by the lack of detail in ethics decisions. Every decision, whether a finding of a violation is reached or not, needs to include a succinct, narrative description of the relevant facts based on the evidence and testimony presented to the Hearing Panel. A well written, comprehensive decision with detailed findings of fact not only enables the parties to understand the basis for the Hearing Panel's decision whether the Code was violated, it also enables the Directors to ratify the decision without an appeal, confident in the knowledge the Hearing Panel correctly applied the Code to the facts. *(Revised 11/11)*

Appendix II to Part Four

Appropriate Interpretation of "Pertinent Facts" as Used in Article 2 of the Code of Ethics

Article 2 of the National Association's Code of Ethics obligates REALTORS® to refrain from exaggerating, misrepresenting, or concealing pertinent facts related to a property or to a transaction. Faced with an increasing volume of inquiries concerning the appropriate interpretation and application of Article 2 of the Code of Ethics, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 2 has occurred.

A number of states have chosen, either through legislation or by regulation, to specify that real estate licensees have no obligation to discover or disclose certain facts regarding a property or its former or current occupants. In some instances, the disclosure of such information is expressly prohibited. In still other instances, states have chosen not to provide such guidance, and REALTORS® and others have looked to a variety of sources for guidance.

The Code of Ethics, which frequently establishes duties and obligations higher than those required by the law, must give way when those obligations conflict with the law. If the law prohibits disclosure of certain types of information to, for example, potential purchasers, then the Code of Ethics must not, under any circumstances, be read as requiring such disclosures.

At the same time, where the law simply provides that there is no express or implied duty to discover or disclose pertinent factors, the duties imposed by Article 2 come into play. Absent a legal prohibition, any material fact that could affect a reasonable purchaser's decision to purchase, or the price that a purchaser might pay, should be disclosed as required by Standard of Practice 2-1 if known by the REALTOR® unless, again, otherwise prohibited by law or regulation. Such factors include, but are not limited to, those factors that might affect the habitability of the property. Other factors that do not affect the habitability of the property may nonetheless have an effect on the desirability of the property, the price a reasonable purchaser might pay for it, or the potential purchaser's ability to resell the property at a future date.

Hearing Panels should also consider that a once-pertinent factor can, in some instances, diminish in relevancy over a period of years. For example, a traumatic death that occurred recently in a home could have a greater influence on a reasonable purchaser's decision than a similar occurrence twenty (20), fifty (50), or one hundred (100) years earlier. By way of further example, the fact that a former occupant had died of scarlet fever fifty (50) years earlier would likely have less of an effect on a potential purchaser's decision than the fact that there had been a murder on the premises within the past year.

It is no more possible to establish a black-letter definition of "pertinent facts," as related to Article 2, than it would be to establish a "procuring cause" template or rule that would define with precision, in every instance, entitlement to compensation in an otherwise arbitrable situation. Rather, reasonableness and common sense must be relied on in making such determinations. The question that Hearing Panels should consider in determining whether a REALTOR® has exaggerated, misrepresented, or concealed a pertinent fact is whether disclosure of the fact in question could have had an effect on a reasonable purchaser's decision. If the Hearing Panel concludes that the fact was material and was adverse but not necessarily subject to Standard of Practice 2-1's discovery requirement,but was known by the REALTOR® and could have influenced a reasonable purchaser's decision, then exaggeration, misrepresentation, or concealment of that fact could be the basis for finding that Article 2 had been violated. *(Approved 4/91)*

Appendix III to Part Four

Responsibility of Member Boards with Respect to Article 10 of the Code of Ethics

Nature of Complaints

REALTORS® and REALTOR ASSOCIATE®s recognize their social responsibility to conform their business conduct to the NATIONAL ASSOCIATION OF REALTORS®' Code of Ethics. All Member Boards have a Professional Standards Committee which is charged with enforcement of the Code of Ethics in accordance with the procedures set forth in the Board's bylaws. Equal professional service without regard to race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity is a basic commitment embodied in Article 10 of the Code of Ethics. Any allegation that a member has violated this principle and Article 10 must be taken seriously by the Board. *(Revised 11/22)*

The complaints may not always be based specifically upon alleged denial of equal professional service and consequent violation of Article 10 of the Code of Ethics. Some complaints may be based upon alleged instances of "blockbusting," racial steering, inducement of "panic peddling," or allegation of outright discrimination based on race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity by REALTORS® and REALTOR ASSOCIATE®s. With respect to such complaints, the individual Articles of the Code of Ethics are the only grounds upon which a Member Board Professional Standards Committee may take disciplinary action or assess disciplinary penalties upon Board Members. *(Revised 11/22)*

Handling of Complaints

The Fair Housing Partnership Agreement between the United States Department of Housing and Urban Development and the NATIONAL ASSOCIATION OF REALTORS® replaced the twenty (20) year old Voluntary Affirmative Marketing Agreement (VAMA). Under the VAMA there was specific language regarding the handling of complaints. The VAMA has expired and those specific requirements no longer are applicable. Complaints alleging violation of Article 10 or the Code for Equal Opportunity in Housing are to be handled in the same manner as other complaints under the Code of Ethics. Boards are urged to utilize their Equal Opportunity Committees to implement the new Fair Housing Partnership. Equal Opportunity Committees can be of assistance to the Board in helping the Grievance and Professional Standards Committees understand the fair housing issues facing a community and the nuances of specific discriminatory practices. *(Revised 11/97)*

The National Association recommends that training be conducted on the investigation and processing of complaints involving Article 10. The Board's Equal Opportunity Committee will be given anonymous summaries of the disposition of such complaints to permit the committee to better tailor its future activities and training to the types of fair housing problems being encountered within the Board.

Resolution of Complaints

The Board's Professional Standards Committee must act on the complaint in accordance with procedures set forth in the Board's bylaws. In addition, no matter what the basis for the complaint, the committee can judge and evaluate it only on the basis of the Code of Ethics. While an alleged act of discrimination may violate the Code of Ethics as well as applicable fair housing laws, the Professional Standards Committee may not attempt to enforce federal, state, or local fair housing and equal opportunity laws. It is charged only with enforcement of the NATIONAL ASSOCIATION OF REALTORS®' Code of Ethics. If the complaint is based solely on an alleged violation of the law, the Board's Professional Standards Committee must decline to hear it and instead refer the matter to the proper authorities.

Moreover, the committee, after receipt of a complaint, should decline to hold a hearing if the allegation that Article 10 has been breached is the subject of litigation involving alleged violation of law until after such litigation is concluded. In order to preserve the right of the complaining party to professional standards review, however, the Board should not refuse to accept the filing of a complaint in a matter subject to pending litigation. While the power of the Professional Standards Committee is not preempted by such litigation, the Board may properly elect to let issues of fact which are common to the litigation and the complaint under the Code be decided by the court in view of the court's substantially greater powers to compel discovery of relevant facts. In addition, under some circumstances the punishment imposed in a litigated case may render any action the Board might take a "meaningless act" (such as expulsion from the Board of a member who has already lost his license). However, the Board is not bound by any decision in a litigated controversy. *(Revised 11/97)*

The Code for Equal Opportunity in Housing

In May 1972, the NATIONAL ASSOCIATION OF REALTORS®' Board of Directors approved the Code for Equal Opportunity in Housing and strongly urged all Member Boards to adopt it. The Code for Equal Opportunity in Housing recognized five (5) basic fair housing obligations governing REALTORS® and REALTOR ASSOCIATE®s in the conduct of their business. In November 1999, Article 10 of the Code of Ethics and its Standards of Practice were amended to include all obligations under the Code for Equal Opportunity in Housing. With these amendments, the Code for Equal Opportunity in Housing was sunset by the Board of Directors of the NATIONAL ASSOCIATION OF REALTORS®.

The five (5) basic fair housing obligations that were recognized by the Code for Equal Opportunity in Housing prior to it being sunset were:

First: In the sale, purchase, exchange, rental, or lease of real property, REALTORS® and their sales associates had the responsibility to offer equal services to all clients and prospects without regard to race, color, religion, sex, handicap, familial status, or national origin. This encompassed:

(a) standing ready to enter broker-client relationships with or show property equally to members of all racial, religious, or ethnic groups

(b) receiving all formal written offers and communicating them to the owner

(c) exerting their best efforts to conclude all transactions

(d) maintaining equal opportunity employment practices

Second: Members, individually and collectively, in performing their agency functions, had no right or responsibility to volunteer information regarding the racial, religious, or ethnic composition of any neighborhood or any part thereof.

Third: Members would not engage in any activity which had the purpose of inducing panic selling.

Fourth: Members would not print, display, or circulate any statement or advertisement with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.

Fifth: Members who violated the spirit or any provision of the Code for Equal Opportunity in Housing would be subject to disciplinary action.

When adoption of the Code for Equal Opportunity was integrated with Article 10 of the Code of Ethics, to which all REALTORS® and REALTOR ASSOCIATE®s must subscribe as members of the NATIONAL ASSOCIATION OF REALTORS®, the result is a positive public position on civil rights and on fair and equal housing opportunities.

In January 2020, the leadership of the NATIONAL ASSOCIATION OF REALTORS® passed a Fair Housing Action Plan to reaffirm and strengthen the association's fair housing commitment. The Fair Housing Action Plan, abbreviated "ACT," specifically committed the NATIONAL ASSOCIATION OF REALTORS® to:

- work closely with state association executives to ensure that state licensing laws include effective fair-housing training requirements and hold real estate agents accountable to their fair housing obligations
- launch a public-service announcement campaign that reaffirm NAR's commitment to fair housing, and how consumers can report problems
- integrate fair housing into all REALTOR® conferences and engagements
- explore the creation of a voluntary self-testing program, in partnership with a fair housing organization, as a resource for brokers and others who want confidential reports on agent practices so they can address problems
- create more robust fair housing education, including unconscious-bias training, and education on how the actions of REALTORS® shape communities
- conduct a national study to determine what factors motivate discrimination in sales market
- profile leaders who exemplify the best fair housing practices and workplace diversity
- develop materials to help REALTORS® provide consumers with information on schools that avoids fair housing pitfalls *(Revised 10/20)*

Appendix IV to Part Four

Rationale of Declaratory Relief Procedure

Central to the enforcement of the Code of Ethics is **Part Four,** Section 25, Preliminary Judicial Determination Prior to Imposition of Discipline, which provides:

> *If the Board of Directors has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court of competent jurisdiction in a suit by the Board for declaratory relief declaring that the discipline proposed violates no rights of the member.*

The purpose of the declaratory relief procedure is to avoid, or at least minimize to the maximum extent possible, the risk that the Board or its members may be legally liable in damages as a result of their enforcement of the Code of Ethics.

Boards of REALTORS® are not courts of law, and REALTORS® are not members of the judiciary. However well-advised they may be by Board counsel, the requirements of substantive law or of procedural due process are often complex and difficult to perceive fully and to apply correctly. Moreover, in many states, Boards are without many of the powers and mechanisms which are available to courts of law, i.e., subpoena and other powers of discovery, etc., to aid in the identification and protection of legal rights.

The great value of seeking confirmation of decisions involving enforcement of the Code of Ethics, where the disciplined member does not appear to accept the decision, is that such confirmation permits the correction of any violations of law or procedure before such violations can cause injury and hence liability. This means, in turn, that the controversy will have little interest to the "contingent fee" attorney. It further means that the Board is on record with the court as having "clean hands;" that is, as seeking to do justice and construe its policies and rules in accordance with the law.

There is one principle all Boards must respect: the Code of Ethics must be construed and enforced, at all times, in a manner consistent with the requirements of law and due process. While the Code exacts a standard of performance from REALTORS® which goes beyond the law, the Code does not place the REALTOR® or the Board above the law.

Needless to say, in any instance in which a declaratory judgment is sought, the implementation of discipline should be stayed until final judgment is rendered confirming its propriety.

Procedures for securing declaratory judgments of the type contemplated by **Part Four,** Section 25 will vary from state to state. For this reason, each State Association, working with its counsel, will want to develop, to the extent possible, detailed information as to how such proceedings may be instituted by Board counsel. These procedures should be periodically reviewed at meetings of Board attorneys and standard forms of pleadings developed wherever possible. Although no petition for declaratory relief should be prepared except by the Board's legal counsel, a sample outline of content for a petition for declaratory relief may be found in Form #E-18.

Moreover, whenever a declaratory judgment proceeding is contemplated by a Board, it is recommended that a copy of the complaint be submitted to the State Association prior to filing. The purpose of such submission is threefold: first, to permit the State Association to acquaint the Board with any other relevant precedents; second, to advise the Board of any problems perceived in the complaint or issues presented; and third, to acquaint the State Association, and through it the NATIONAL ASSOCIATION OF REALTORS®, with controversies involving issues having state or national implications and requiring state or national involvement.

While not without cost, the declaratory judgment procedure is nevertheless an economical form of litigation. By its very nature, it should avoid the usual heavy litigation costs of defending the issues of "damages". By concerning itself with issues of law, it avoids the significant legal costs normally involved in arguing factual issues. Moreover, the procedure tends to avoid the polarization of the parties and the antagonism which attends litigation when a sanction has been imposed.

It has been said that the declaratory judgment proceeding is unsatisfactory because it delays the imposition of discipline, frustrates the consensus of the Board, and involves the Board in unnecessary litigation and costs.

There is a single answer to this complaint, and it is a complete one.

Any action taken by the Board which cannot survive a declaratory judgment proceeding would certainly subject the Board and its members to legal liability. Avoiding this liability is well worth the minimal delays and costs represented by the declaratory judgment proceeding. To the extent it frustrates the consensus of the Board, such consensus must be, and should be, frustrated, since it necessarily violates the law.

In a time of shifting social, economic, and political values, of uncertain legal precedents, and of arbitrarily escalated legal liability, the declaratory judgment procedure represents nothing more nor less than the legal implementation of the worthy maxim "Better safe than sorry."

Appendix V to Part Four

Ethics Hearing Checklist

(1) **Complaint filed.** The Professional Standards Administrator receives a complaint alleging unethical conduct on the part of a Board Member.

(2) **Complainant.** An ethics complaint may be filed by any person, whether a Board Member or not.

(3) **Time limitation.** An ethics complaint must be filed within one hundred eighty (180) days after the alleged offense and facts relating to it could have been known by the complainant in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later. *(Amended 11/22)*

Suspension of filing deadlines: If the Board's informal dispute resolution processes (e.g., ombudsman, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to conduct that becomes the subject of a subsequent ethics complaint, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when informal dispute resolution began or ended will be determined by the Board President or the President's designee. The filing deadlines shall also be suspended during any period when the respondent does not hold REALTOR® or REALTOR ASSOCIATE® membership. *(Amended 11/12)*

(4) **Initial assistance.** Depending upon established administrative procedures of the local Member Board, the Professional Standards Administrator may provide additional information to the complainant concerning the required basis and form(s) for properly filing a written complaint. Only written complaints should be a basis for further consideration and action by the Board, except the Grievance Committee is not precluded at any time from investigating, at its discretion, any written or oral complaint against a member, or from reviewing any information which may come to its attention concerning a Board Member. *(Amended 4/94)*

(5) **Complaint to Grievance Committee.** When a written complaint is received, the Professional Standards Administrator refers it to the Chairperson of the Grievance Committee for preliminary review by the Grievance Committee in order to determine proper disposition of the complaint — i.e., whether to (1) dismiss the complaint as unworthy of further consideration, (2) refer it back to the complainant as appropriate for arbitration rather than disciplinary action, or (3) refer it to the Professional Standards Administrator to arrange a hearing by an ethics Hearing Panel of the Professional Standards Committee. *(Amended 4/94)*

If the complaint is from a client, customer, or a member of the general public, and the Grievance Committee determines that the complaint is not properly framed (or is ambiguous or otherwise insufficient), the Grievance Committee Chairperson may assign a member of the Grievance Committee to assist the complainant in preparing a proper complaint. In such instances, the Grievance Committee member so assigned does not become or act as an advocate or representative for the complainant, but provides appropriate procedural information only. Further, the Grievance Committee member acting in this capacity shall not participate in any consideration of the complaint by the Grievance Committee. *(Revised 11/14)*

If the complaint asserts multiple allegations of unethical conduct and the Grievance Committee determines that one or more of the allegations are unworthy of further consideration, that portion of the complaint may be dismissed while the balance of the complaint is forwarded for a hearing. If the Grievance Committee determines that the complaint cites an inappropriate Article or Articles of the Code, the Grievance Committee may amend the complaint by deleting the inappropriate Article(s) and adding the appropriate Article(s) and/or individual(s). However, if an Article or Articles or an additional respondent(s) is added to the complaint by the Grievance Committee and the complainant does not agree with the addition, the Grievance Committee may file its own complaint citing those Article(s) and/or individual(s), and both complaints would be heard simultaneously by the same Hearing Panel. *(Revised 11/91)*

(6) **Preliminary review by Grievance Committee.** The Grievance Committee may render its determination on the basis of the complaint received, or, it may, at its discretion, send a copy of the complaint to the party complained of and require him to furnish a response before making its determination as to the proper disposition of the complaint only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. This review process may include additional information other than the written complaint itself only if necessary to determine whether a complaint will be referred for hearing. Failure to respond to the Grievance Committee's request may result in the complaint being forwarded for a hearing and in a possible charge that the respondent has not complied with the obligations of Article 14 of the Code of Ethics. *(Revised 11/15)*

(7) **No Grievance Committee "hearings".** The Grievance Committee's function does not include the holding of any hearings. Rather, it makes a preliminary review to determine the proper disposition of the complaint. *(Amended 4/94)*

(8) **No decisions on Code violations by Grievance Committee.** The Grievance Committee does not render a determination purporting to find a violation, or the absence of a violation, of the Code of Ethics, nor does it purport to find a violation, or absence of a violation, of law.

(9) **Action initiated by Grievance Committee.** On its own motion, the Grievance Committee may — or, upon instruction

from the Board of Directors, must review the actions of any member when there is reason to believe that the member's conduct may be subject to disciplinary action. *(Amended 4/94)*

(10) **Grievance Committee as complainant.** If review by the Grievance Committee, acting on its own motion or upon instruction from the Board of Directors, reveals evidence of potentially unethical conduct sufficient to warrant a hearing, the Grievance Committee prepares a complaint and refers it to the Professional Standards Administrator to arrange an ethics hearing. The Chairperson of the Grievance Committee or a member of the Grievance Committee designated by the Chairperson will act as the complainant at the hearing before a Hearing Panel of the Professional Standards Committee (the Grievance Committee as complainant is acting on behalf of the Board of REALTORS®). *(Amended 4/94)*

(11) **Dismissal of complaint by Grievance Committee subject to appeal.** The dismissal of a complaint or any portion of a complaint by the Grievance Committee may be appealed by the complainant to the Board of Directors within the time specified in the Board's procedures using Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint. The complaint and any attachments to the complaint may not be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the complaint should be dismissed. In considering the appeal, the Directors should consider only the same information that was considered by the Grievance Committee in making its determination to dismiss the complaint, and the complainant and respondent do not have the right to appear at the hearing before the Directors. *(Revised 5/06)*

The appeal may be heard by a panel of Directors appointed by the President. Any appeal panel must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and binding and is not subject to further review by the Board of Directors. *(Revised 11/91)*

(12) **Action if complaint is referred for hearing.** If the complaint is referred for hearing, the Professional Standards Administrator serves a copy of the complaint to each party complained of, and notifies each party that he may file a written reply to the complaint within the time period specified in the Board's procedures.

(13) **Late filing of reply**. A Hearing Panel, at its discretion, may accept late filing of a reply to a complaint.

(14) **Resignation/termination of membership.** If the respondent resigns or otherwise terminates membership in the Board after an ethics complaint is filed but before final action is taken by the Board of Directors, the Professional Standards Administrator forwards the complaint to any other Board in which the respondent continues to hold membership. If the respondent does not hold membership in another Board, or if the Professional Standards Administrator is unable to determine if the respondent holds membership in another Board, the complaint shall continue to be processed until the decision of the association with respect to disposition of the complaint is final consistent with Section 20, Initiating an Ethics Hearing, or Section 23, Action of the Board of Directors, *Code of Ethics and Arbitration Manual*.* If an ethics respondent resigns or otherwise causes membership in all Boards to terminate before an ethics complaint is filed alleging unethical conduct occurred while the respondent was a REALTOR®, the complaint, once filed, shall be processed until the decision of the association with respect to disposition of the complaint is final consistent with Section 20, Initiating an Ethics Hearing, or Section 23, Action of the Board of Directors, *Code of Ethics and Arbitration Manual*.* In any instance where an ethics hearing is held subsequent to an ethics respondent's resignation or membership termination, any discipline ratified by the Board of Directors shall be held in abeyance until such time as the respondent rejoins an association of REALTORS®. In any instance where a complaint is transferred to another Board, the complainant shall be so advised. *(Revised 5/16)*

(15) **Request for additional copies from complainant and respondent.** As a matter of local option, the Professional Standards Administrator may request the complainant and respondent to supply a specified number of copies of the complaint and response, or other documentation, as needed for appropriate distribution, except a non-Board Member complainant should generally not be required to supply multiple copies. This could be construed as overly burdensome by the public.

(16) **Distribution of complaint and reply.** After fifteen (15) days, the Professional Standards Administrator shall transmit copies of the complaint and the reply (if any) to (1) the complainant (response only), (2) the Board President, and (3) the Chairperson of the Professional Standards Committee, or notify each that no reply has been filed. *(Revised 11/14)*

(17) **Appointment of Ethics Hearing Panel.** At the same time, the Professional Standards Administrator shall transmit a list of names of the members of the Professional Standards Committee to the parties and provide them with an opportunity to challenge proposed panel members for cause. Any disqualification must be filed within ten (10) days from the date the list is transmitted to the parties. From the names not successfully challenged by either party, the Professional Standards Committee Chairperson shall select, no later than five (5) days after challenge forms are due, a Hearing Panel of three (3) or more members, a majority of whom shall be REALTORS®. The Chairperson shall also select one of the panel members to serve as Chairperson of the Hearing Panel. Any Hearing Panel must have an odd number of members. A majority must be REALTORS®, and if a REALTOR ASSOCIATE® or REALTOR® other than a principal is a party to the ethics proceeding, one (1) of the panelists shall be a REALTOR ASSOCIATE® or REALTOR® other than a principal. *(Revised 11/14)*

*Failure of the respondent to attend will not prevent a hearing from being held.

(18) **Time and place of hearing.** The Chairperson of the Professional Standards Committee, or the panel itself, or its Chairperson, shall designate a time and place for hearing the complaint. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. The complaint and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be __________________ (as determined by the Board of Directors) and shall be adhered to for all hearings. *(Revised 04/14)*

(19) **Proper notice of hearing.** It is important that the Professional Standards Administrator properly and promptly notify the parties of the time and place of hearing. The notice of hearing should include a listing of the members of the Hearing Panel (tribunal) who have been selected from the names of members of the Professional Standards Committee not successfully challenged by either party. An outline of the hearing procedures should also accompany the notice of hearing. *(Revised 11/98)*

(20) **Withdrawal of complaint.** Complainants may withdraw their complaints at any time prior to adjournment of the ethics hearing. However, if complainant withdraws the complaint after transmission of the Grievance Committee's decision to forward the complaint to a hearing and prior to adjournment of the ethics hearing, the complainant may not resubmit the complaint on the same matter. If complainant withdraws the complaint before transmission of the Grievance Committee's decision to forward the complaint to a hearing, the complainant may resubmit the complaint on the same matter so long as it is filed within the 180-day filing deadline as defined in this Manual. If a complaint is withdrawn by the complainant after the Grievance Committee determines the complaint requires a hearing, it will be referred back to the Grievance Committee to determine whether a potential violation of the public trust (as defined in Article IV, Section 2 of the National Association's Bylaws) may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. *(Amended 5/16)*

(21) **Amendment of complaint.** The complainant can amend the complaint at any time prior to hearing, including facts upon which the amendment is based. However, the respondent must receive a copy of the amended complaint and have an opportunity to amend the response to the complaint. Complaints cannot be amended to add, or substitute, other individuals as complainants except as mutually agreed to by the parties. *(Revised 5/20)*

(22) **Amendment during a hearing.** At any time during a hearing, the complainant or the Hearing Panel may amend the complaint, including facts upon which those amendments are based. Amendments to include Articles previously dismissed by the Grievance Committee may be made only on the motion of the Hearing Panel. With the concurrence of the respondent, the hearing may proceed uninterrupted or may be continued to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment. If the hearing continues uninterrupted, the fact that the respondent waived his right to an adjournment should be read into the record, and the hearing will proceed on the basis of the amended complaint. *(Amended 5/20)*

(23) **Amended complaint in writing.** If the hearing is adjourned to a later date, the amended complaint must be filed in writing, signed by the complainant or Chairperson of the Hearing Panel, and promptly served on the respondent to allow opportunity for response to the amended complaint.

(24) **Failure to appear at duly noticed hearing.** If a respondent does not appear at a hearing without having obtained a continuance, the Hearing Panel may proceed with the hearing and reach a decision on the evidence available. The procedures to be followed shall be those specified in the *Code of Ethics and Arbitration Manual*. If a party does not appear, it is prudent to place a telephone call to determine if there is valid cause for the absence.

If a member of the public files an ethics complaint which is reviewed by the Grievance Committee and forwarded for a hearing before an ethics Hearing Panel, and the member of the public refuses or is unable to appear at the hearing, the complaint should be referred back to the Grievance Committee for amendment to name the Grievance Committee as complainant if the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., clear, strong, and convincing proof). *(Amended 11/98)*

In the event the complaint scheduled for hearing is from a REALTOR® or REALTOR ASSOCIATE® who refuses or is unable to attend the hearing, the complainant shall be advised that refusal to participate in the hearing, absent a satisfactory reason, may result in a charge that the complainant has violated Article 14's obligation to place all pertinent facts before an appropriate tribunal of the Board. *(Amended 11/98)*

If the REALTOR® or REALTOR ASSOCIATE® complainant continues to refuse a duly noticed request to appear, or if the complainant is excused from appearing for reasons deemed valid by the Hearing Panel, the hearing shall not take place but rather the complaint shall be referred back to the Grievance Committee. If the Grievance Committee determines that there is sufficient information for a Hearing Panel to consider (i.e., clear, strong, and convincing proof), the complaint shall be amended to name the Grievance Committee as complainant and the hearing shall be continued to a new date. The respondent shall be provided with a copy of the amended complaint in such cases. *(Revised 11/98)*

(25) **Decision by Hearing Panel.** The decision of the Hearing Panel shall be by simple majority vote, in writing, and contain findings of fact, a conclusion as to the alleged violation(s) of the Code of Ethics, and a statement of disciplinary action recommended, if any. The Hearing Panel will consider all previous violations and sanctions and the rationale for the current disciplinary action can be provided to the parties and the Directors as part of the decision. The Hearing

Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel). *(Amended 11/13)*

(26) **When Hearing Panel decision is final.** The Hearing Panel decision shall be considered final only when signed, reviewed by legal counsel, and filed with the Professional Standards Administrator. The decision and recommendation of the sanction, if any, shall be a recommendation to the Board of Directors and shall be implemented only upon review and approval by the Board of Directors.

(27) **Recommendation of sanction.** In its recommendation of sanction, the Hearing Panel may, at its discretion, consider all records of previous violations and sanctions, if any, in the member's file.

(28) **Distribution of decision.** The Professional Standards Administrator shall send a copy of the decision to the complainant and the respondent within the time specified in the Board's procedures after receipt from the Hearing Panel in its final form. However, reasonable delay will not invalidate the procedures of the Board.

(29) **Right of appeal.** Either the complainant or the respondent in an ethics hearing may file an appeal with the President within twenty (20) days after the final decision of the Hearing Panel is transmitted. However, the complainant may appeal based only on alleged procedural deficiencies or other lack of procedural due process that may have deprived the complainant of a fair hearing. The appeal should state a valid cause for seeking the appeal and the consideration of the appeal shall relate only to the bases stated in the appeal petition. *(Amended 11/14)*

(30) **Prerogatives of Directors in respect of Hearing Panel recommendation.** If there is no appeal by any party to an ethics hearing, the Directors must adopt and direct implementation of sanction, except if the Directors have a concern for procedural deficiency, in which case they may refer the decision back to the Professional Standards Committee for a new hearing and recommendation by a new Hearing Panel. If the Directors are concerned with the appropriateness of the recommended sanction, they may refer the decision back to the original Hearing Panel for further consideration and recommendation. The Directors may also accept the decision of the Hearing Panel and may reduce the discipline recommended but may not increase the discipline beyond that recommended by the Hearing Panel.

(31) **Appeal deposit.** Any appeal to the Board of Directors from the decision and recommendation of the ethics Hearing Panel shall be accompanied by a deposit that may not exceed $500 and should include a statement of the basis for the appeal—i.e., misapplication or misinterpretation of the Article(s) of the Code, procedural deficiency or lack of due process, or the recommended discipline. In cases where a single appeal is filed jointly by more than one party, only one filing fee may be assessed. *(Amended 11/12)*

(32) **Notice of appeal to Directors.** Any appeal to the Board of Directors shall be noticed properly to the parties and to the Directors. The written request for appeal shall be reviewed by the Board President or the President's designee only for the purpose of determining whether the appeal states any legitimate basis for consideration by the Board of Directors. All requests for appeals received by the Board must be considered by the Board of Directors, and only those bases and issues raised in the written request for appeal may be raised by the appellant in any hearing before the Board of Directors. *(Amended 11/94)*

The matter will be heard at the next regularly scheduled meeting of the Directors or at a special meeting called for the purpose of hearing the appeal, but no later than thirty (30) days after the date of receipt of the appeal, giving a minimum of ten (10) days notice. *(Amended 11/14)*

The appeal may be heard by a panel of Directors appointed by the President. Any appeal panel must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and binding and is not subject to further review by the Board of Directors. *(Revised 11/91)*

(33) **Information provided to Directors.** The Directors shall be provided in advance with copies of the complaint, response, the findings of fact, conclusion of the Hearing Panel as to violation(s) of the Code of Ethics, recommendation of discipline, the appeal request or amended appeal request, and the President's correspondence, if any. All documents provided to the Board of Directors are confidential, and no Director shall discuss materials received except in an appeal meeting of the Board of Directors. However, a breach of confidentiality shall not invalidate the decision of the Board of Directors.

(34) **Information considered by Directors in an appeal proceeding.** An appeal to the Board of Directors shall be determined on the basis of the transcript, recording, or summary of the proceeding by the Hearing Panel Chairperson, and no new evidence shall be considered unless the basis of the appeal is the Hearing Panel's alleged refusal to admit or receive evidence a party feels properly should have been allowed. The parties may appeal to the merits of the Hearing Panel's findings of fact, decision, and recommendation for sanction and may correct the summary, the transcript, or recording. Only the bases and facts raised in the written appeal may be raised by the appellant at the hearing before the Board of Directors.

(35) **Disposition of deposit money.** The deposit filed with the petition for appeal will accrue to the general treasury of the Board if the Directors confirm the Hearing Panel's decision and recommendation. The deposit will be returned to the appellant if the Board of Directors' decision is to dismiss the charge. If the Hearing Panel's decision and recommendation is modified, the Directors will determine the disposition of the deposit.

(36) **Directors' decision in writing.** The Directors' decision will be in writing. As soon as the decision is in final form, but within five (5) days, it shall be provided to the parties and the Hearing Panel. *(Revised 5/17)*

(37) **Directors' decision final.** The Directors' decision in respect of any professional standards ethics proceeding shall be final and binding upon the parties. No appeal procedure is provided by the State Association or the NATIONAL ASSOCIATION OF REALTORS®.

(38) **Notice of final action.** When the decision is final, a notice of the action shall be provided by the Professional Standards Administrator to the following: (1) complainant, (2) respondent, (3) Board of Directors, (4) Hearing Panel, (5) Association legal counsel, (6) the Professional Standards Administrator of any other Association in which the respondent holds membership, and (7) any government agency as may be directed by the Board of Directors, based on advice of legal counsel. *(Revised 11/22)*

Such notice shall be provided as the President deems appropriate under the circumstances provided the proposed notice has been reviewed and approved by Association legal counsel.

Other Association Members shall be notified only of suspension or expulsion of a member, or unless one of the publication options in Professional Standards Policy Statement 45, Publishing the Names of Code of Ethics Violators, has been adopted, or unless notification is required to ensure compliance with the Association's bylaws (e.g., where a petition for removal of an officer or director must state the reason(s) an officer or director is deemed disqualified from further service). *(Revised 05/18)*

(39) **Failure to comply with discipline imposed.** Any discipline that requires an action on the part of the disciplined member should also indicate any additional penalties that may be automatically invoked for failure to comply with the discipline by the date specified.

If the decision does not indicate that additional penalties may be automatically invoked for failure to comply with the discipline by the date specified, the member's failure to comply should not result in a new ethics hearing, but should be referred to the Board of Directors for their consideration. If additional penalties are contemplated, the member should have the opportunity to appear before the Board of Directors and explain the failure to comply. The Board of Directors, if not satisfied with the explanation, may impose additional sanctions (including suspension or expulsion) in a manner consistent with the procedures in the Board's *Code of Ethics and Arbitration Manual*.

(40) **Declaratory judgment.** If the Directors believe a member may resort to litigation rather than abiding by the discipline imposed, the Directors should consider making the imposition of discipline contingent upon entry of a judgment by a court of competent jurisdiction asserting that the Board's action will not violate any of the member's rights.

(41) **Refusal to arbitrate.** If a member refuses to arbitrate, where arbitration is not precluded by law, the matter will not be referred to the Grievance Committee for a hearing by an ethics Hearing Panel, but shall be referred to the Board of Directors, and the Directors shall consider only the sole fact of whether a Board Member has refused to arbitrate a properly arbitrable matter. Upon an affirmative finding of refusal to arbitrate, the Directors may order sanction as deemed appropriate in accordance with the procedures of the Board.

(42) **Refusal to abide by an award in arbitration.** There should be no ethics hearing in the first instance of such a refusal by a Board Member, but the Board should recommend that the award recipient seek judicial enforcement of the award rendered by the arbitration panel. The award recipient should seek reimbursement of legal fees, and if these legal fees are not reimbursed by the court in its final decision, the Board of Directors may, at its discretion, reimburse the award recipient for legal fees incurred. If a member engages in a pattern of noncompliance, judicial enforcement should be utilized in each case for effective enforcement of the award, and the Board is not precluded from considering the action of the individual as an alleged violation of Article 17 of the Code of Ethics.

Summary of Administrative Time Frames — Ethics Proceedings

Situation	Time Table
Grievance	
Complaint filed	180 days . . .
Response required/# of days to submit	15 days from request for response being transmitted if response solicited
Complainant's appeal to Directors	20 days from transmittal of dismissal notice
Directors review	Next meeting
Professional Standards	
Respondent provides response	15 days from request for response being transmitted; staff transmits response to the complainant within 5 days from receipt
Challenge forms	10 days to challenge from date forms transmitted to parties
Panel named	5 days after challenge forms are due
Hearing notice	21 days in advance of hearing
Complaint/response to panel	Board option
Notice of witnesses and counsel	15 days before hearing to Board and other party
Adjourned hearing	Not less than 15 days or more than 30 days from hearing (unless a "late" witness is allowed and then not less than five days from hearing)
Decision filed	Day of hearing, or no later than 48 hours after hearing
Transmit decision	5 days after decision filed with staff, except if it is necessary to obtain association counsel's review
Appeal	
Appeal filed	20 days after decision transmitted
Preliminary review	Within 10 days after appeal transmitted to association
Amendment received	Within 10 days of notice
Appeal heard	Next/special meeting giving 10 days minimum notice, but not later than 30 days after receipt of appeal; Directors' written decision transmitted to parties within 5 days of appeal hearing

(Revised 11/17)

Appendix VI to Part Four

Cooperative Enforcement of the Code of Ethics

Professional Standards Policy Statement #40 provides:

> *To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Boards and Associations are required to enter into cooperative enforcement agreements to ensure Boards and/or Associations have an aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/ participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Board (which may be the state association) in a cooperative enforcement agreement.* (Revised 5/08)

Numerous questions have arisen with respect to what is required by this policy and what approaches/techniques are available to Boards/Associations in meeting these standards. The following is provided by the National Association's Professional Standards Committee to provide assistance. The models that are described below do not exclude other approaches.

At the outset, it is important to understand that the "aggregate total of at least three hundred fifty (350) primary REALTOR® and REALTOR ASSOCIATE® members" refers to the total number of primary REALTOR® and REALTOR ASSOCIATE® members of the Board or Boards, not to the number of members available to participate directly in Code enforcement activities. In other words, if a Board has one hundred (100) primary members, it will need to enter into an agreement with another Board with at least two hundred fifty (250) primary members of its own (or with two other Boards with at least two hundred fifty (250) primary members between them, and so on) or into an agreement with the state association so that the aggregate (or total) population of primary members is at least two hundred fifty (250). Again, this does not mean that all two hundred fifty (250) of these REALTORS® must be involved in enforcement activities. *(Revised 5/08)*

It is equally important to understand that there are a variety of ways that these aggregate totals can be realized. The following are offered for the consideration of Boards and Associations.

Limited Regionalization. Under this approach, two or more Boards retain their respective Grievance Committees to receive and review ethics complaints and arbitration requests. Similarly, requests for procedural review (arbitration) and appeals (ethics) would be considered by the Board of Directors (or a panel thereof) of the Board that had received and initially processed the complaint or arbitration request. Only the Professional Standards Committees of the Boards would be consolidated so that hearing panelists would be drawn from an expanded "pool".

Comprehensive Regionalization. Similar to limited regionalization except that Grievance Committees and Boards of Directors are consolidated for Code enforcement activities. Thus, if three Boards were party to a comprehensive regionalization agreement, they would have only one Grievance Committee and one Professional Standards Committee among them. For obvious reasons, each Board would retain its own Board of Directors but Directors would be "pooled," and panels drawn from the "pool," when engaged in Code enforcement activities other than imposition of discipline.

Regionalization with State Association involvement. If available, Boards may enter into agreements with their State Association of REALTORS® under which the local Board retains primary responsibility for providing hearing panelists but the State Association agrees to augment these efforts by providing members of the State Association's Professional Standards Committee to serve on Hearing Panels on an "as needed" basis.

(NOTE: Regionalization efforts of the types described above may appropriately include Boards in different states.)

State-wide Regionalization. Under this approach, ethics complaints and arbitration requests are initially received and reviewed by the State Association's Grievance Committee; hearings are conducted by panels of the State Association's Professional Standards Committee; and appeals and requests for procedural review are considered by the State Association's Board of Directors. Where appropriate, these committees may be divided into regions within the state to carry out their enforcement responsibilities.

Reciprocal enforcement agreements. Under this approach, two or more Boards agree to "exchange" enforcement responsibilities. For example, a complaint filed against a member of Board A would be reviewed by the Grievance Committee of Board B; the hearing would be conducted by a Hearing Panel of Board B's Professional Standards Committee; and any appeal or request for procedural review would be conducted by the Board of Directors of Board B. Imposition of discipline would remain that of Board

A's Board of Directors. Reciprocal agreements may be between Boards in different states.

While State Associations are not required to enter into agreements to support and assist local Boards in their Code enforcement efforts, the National Association's Professional Standards Committee strongly encourages their active involvement in these efforts.

Appendix VII to Part Four

Sanctioning Guidelines

The Code of Ethics is designed to establish a public and professional consensus against which the practice and conduct of REALTORS® and REALTOR ASSOCIATE®s may be judged. REALTORS® and REALTOR ASSOCIATE®s in joining a Board signify their intention to abide by the Code and thereby enhance the public and professional image of themselves and all other REALTORS®. Adherence to the Code is the first great bond between REALTORS® and REALTOR ASSOCIATE®s throughout the country, and is an obligation voluntarily accepted by them to ensure high standards of professional conduct to serve the interests of their clients and customers (from the Introduction to the Code of Ethics and Arbitration Manual, *NATIONAL ASSOCIATION OF REALTORS®, 2022 edition).*

Local Associations of REALTORS®, supported by the state and National Associations, have the awesome responsibility of fostering awareness, understanding, and appreciation for the duties and obligations the Code imposes on those who accept it as their guide to professionalism. A corollary duty of Associations is to receive and resolve complaints alleging potentially unethical conduct by REALTORS®.

The REALTOR® organization is firmly committed to comprehensive education of REALTORS® and the public about the Code and the protections it affords, and also to vigorous, fair, and uniform enforcement when complaints are brought against members. The *Code of Ethics and Arbitration Manual* (Manual) details policies and procedures governing enforcement efforts.

Code enforcement achieves a number of goals. Where REALTORS® are wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process educates members about their professional obligations and serves as a meaningful deterrent to future violations. The Introduction goes on to point out that the ethics hearing process ". . . is educational in that it raises the consciousness of members to the meaning and significance of the Code" and that "many ethics violations occur inadvertently or through ignorance, and the hearing procedure serves as an effective educational tool."

Allegations of unethical conduct are often understandably viewed by respondents as threats to their professional and personal reputations. This can result not only in the mounting of vigorous defenses but also, at times, to threats of legal challenge should a violation be determined and discipline imposed. Given that membership confers valuable rights, Associations need to strictly adhere to their established procedures when considering potential ethics violations. This caution ensures that the rights of the parties will be observed and that legal exposure of Associations will be minimized.

At the same time, well-founded caution should not be confused with reservation, reluctance, or hesitancy. The Code's duties become aspirations at best, and potentially meaningless, if not enforced, and enforced with vigor and determination.

Fundamental to fair and consistent Code enforcement is reasonable and judicious use of discipline, as both an educational device and as punishment. The Manual authorizes a wide variety of sanctions that may be imposed for ethics violations and for violations of other membership duties. These range from simple letters of warning to expulsion from REALTOR® membership. Between these extremes are mandatory attendance at remedial educational sessions, fines, probation, and suspension. These sanctions, and the circumstances under which they may be imposed, are discussed in detail in the Manual.

The National Association does not recommend specific discipline for certain offenses, or for violations of particular Articles of the Code. This is in deference to the wisdom and autonomy of Hearing Panels privy to the details of complaints coming before them; in recognition of the fact that no two complaints are identical; and in view of the fact that the details of each hearing, including the experience of respondents, their history of prior violations, and mitigating or extenuating circumstances, may all come into play in determining an appropriate penalty. At the same time, there are key points to be considered with respect to discipline.

Discipline that can be imposed is strictly limited to those forms authorized in the Manual.

- Discipline should be commensurate with the offense. Unintentional or inadvertent violations should result in penalties designed to educate respondents as to the conduct expected of them as REALTORS®. Conversely, if a REALTOR® intentionally violates the Code, for example to realize an economic gain, a more severe sanction would be appropriate. Only authorized forms of discipline may be utilized. *(Revised 11/13)*

- Discipline should be progressive. The disciplinary emphasis on violations by new members or by longstanding members with no history of unethical conduct should be primarily educational. Repeated or subsequent violations should be addressed with more serious forms of discipline including substantial fines, suspension, and termination of membership. (See the section of this Appendix entitled "Progressive Discipline" for a more detailed discussion of progressive discipline).

- A "gray area" can exist with respect to "first time violations" that are clearly not the result of ignorance or mistake but rather demonstrate flagrant disregard for the Code's obligations. While the educational aspect of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must also be seriously considered in determining commensurate discipline.

- Mitigating or extenuating circumstances should be considered in determining appropriate discipline. The fact that a respondent recognized or acknowledged inappropriate or unethical conduct, or took steps to remediate or minimize harm or injury that may have resulted from the respondent's conduct, should be considered in determining appropriate discipline.

- Conversely, cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred should be considered particularly egregious violations of the Code of Ethics when determining appropriate discipline. *(Adopted 11/20)*

- Respondents' records of earlier violations (or, conversely, the fact that they have not violated the Code in the past) can be considered in determining appropriate discipline. Hearing Panels cannot consider past violations in deciding whether the conduct currently complained of violated the Code.

Crafting appropriate, meaningful discipline can challenge panels that have concluded that the Code has been violated. This discussion is offered as guidance, rather than as a hard and fast template, to assist panels in meeting their key role in ensuring the Code's viability and vitality through vigorous and evenhanded enforcement. Suggested guidelines that can be modified locally so long as the discipline proposed is consistent with the permissible forms authorized in the National Association's *Code of Ethics and Arbitration Manual,* can be found in the section of this Appendix entitled "Disciplinary Guidelines."

Progressive Discipline

Discipline imposed for violations of the Code of Ethics or for violations of other membership duties should be progressive, that is discipline should increase incrementally for subsequent violations. The disciplinary emphasis where first time violations occur should be primarily educational. Repeated or subsequent violations should result in more serious forms of discipline being utilized, including substantial fines, suspension, and termination of membership. At the same time, a gray area can exist where a first time violation is not attributable to ignorance or oversight but rather to blatant disregard for the Code and its obligations. While the educational emphasis of Code enforcement cannot be disregarded, the fact that the Code exists to protect the public must be carefully considered in determining appropriate discipline. Three (3) contrasting examples are provided to illustrate these points. *(Revised 11/20)*

Example A: REALTOR® A, who had recently earned her real estate license, was found to have violated Article 12 for advertising a listed property without disclosing her status as either a REALTOR® or as a real estate licensee. At the hearing, REALTOR® A acknowledged her oversight and it was clear to the Hearing Panel that the violation was inadvertent and unintentional. The panel concluded that a letter of reprimand and attendance at a three (3) hour Code of Ethics update session was appropriate.

Two months later, REALTOR® A was charged with a nearly identical violation. After concluding that she had, in fact, violated Article 12, the Hearing Panel was given access to REALTOR® A's files to see whether REALTOR® A had previously violated the Code so that appropriate discipline could be recommended. It was the conclusion of the Hearing Panel that a second violation of the same Article, occurring just months after the first violation, warranted more serious discipline. REALTOR® A was fined $1,000 and required to attend a full day ethics education program. *(Revised 11/13)*

Three months later, REALTOR® A was again found to have violated Article 12. The Hearing Panel was then given access to REALTOR® A's file and, upon learning of the two (2) prior violations in less than a year, recommended a $5,000 fine. *(Revised 11/13)*

Example B: REALTOR® B, who had recently received his real estate license, was found to have violated Article 4 for failing to disclose to his seller-client that the purchaser that REALTOR® B had procured was, in fact, REALTOR® B's wife. In determining appropriate discipline, the Hearing Panel considered REALTOR® B's limited experience in the real estate business and the fact that this was the first time that REALTOR® B had been found in violation of the Code. The Hearing Panel also considered that REALTOR® B's failure to disclose had not been inadvertent or unintentional and that REALTOR® B had knowingly concealed from his client a key fact that might have influenced the client's decision to accept the offer from REALTOR® B's wife. Based on the seriousness of the violation and REALTOR® B's conscious disregard for his disclosure obligation, the Hearing Panel recommended a $5,000 fine and retaking the ethics orientation required for new members. *(Revised 11/13)*

Example C: In social media discussions, REALTOR® C posted several discriminatory and offensive comments which were deemed to be in violation of Article 10 as they discriminated against individuals on the basis of race, color, religion, sex, disability, familial status, national origin, sexual orientation, or gender identity. In determining appropriate discipline, the Hearing Panel considered REALTOR® C's comments as hate speech and discrimination in violation of Article 10 and had reason to believe that a violation of the public trust occurred. Based on the offensiveness of REALTOR® C's comments and his total disregard for the Code of Ethics' obligation to not be a party to any plan to discriminate against members of the protected classes of Article 10, the Hearing Panel recommended a $5,000 fine and mandatory completion of implicit bias training. *(Revised 11/22)*

Disciplinary Guidelines

Code enforcement achieves a number of important goals. Where REALTORS® have been wrongly or mistakenly charged with unethical conduct, the hearing process provides personal and professional vindication. Where violations are determined, the hearing process and resulting discipline educates members about their professional obligations and serves as a meaningful deterrent to future violations.

Determining that a violation of one or more Articles has occurred is only a part of a Hearing Panel's job. Equally important is crafting discipline commensurate with the offense. Panels will want to consider that many violations occur due to lack of familiarity with the Code and its obligations, inexperience, oversight, or as unintentional mistakes. In such cases, the primary purpose of discipline should be educational to ensure that similar violations do not occur in the future. In other cases, violations can occur because of knowing disregard for the Code and its duties. In such cases, greater emphasis will be placed on the punitive nature of discipline.

Hearing Panels are cautioned of the due process concerns of considering a respondent's history of Code violations, as considering too long of a history involving different types of violations can unreasonably affect the severity of the discipline. Typically, Associations might look back a minimum of three (3) years, however, if there is consistency in the types of violations or if the violations are of the public trust, considering a longer history of violations could be appropriate in crafting meaningful discipline aimed at stopping the behavior. *(Adopted 11/20)*

Factors Hearing Panels should consider in determining appropriate discipline include, but are not necessarily limited to:

(1) The nature of the violation.

(2) Harm caused by the violation. Was the violation a minor mistake causing little or no harm or, alternatively, was a client, customer, member of the public, or another REALTOR® harmed? Was the violation one of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud? *(Revised 11/20)*

(3) Was the violation inadvertent or unintentional or, conversely, was it the result of knowing disregard for the Code's obligations?

(4) How much real estate experience did the violator have? Did he, or should he, have known better?

(5) Has the violator been found in violation of the Code previously? How often? How recently? Is the current violation related or similar to earlier violations?

(6) Are there mitigating or extenuating circumstances that should be considered in determining appropriate discipline?

(7) Did the violator acknowledge the violation? Did the violator express remorse or contrition?

(8) Are there other factors that ought to be considered?

With these questions in mind, panels can be guided by (but are not bound by) the following guidelines which may be modified locally at the discretion of each local Association.

First violation example #1
- violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

  Possible discipline:
  - letter of warning
  - fine of $500 or less
  - attendance at relevant education session
  - any combination of the above *(Revised 11/20)*

First violation example #2
- violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligations

  Possible discipline:
  - letter of reprimand
  - fine of $2,000 or less
  - attendance at relevant education session(s)
  - any combination of the above *(Revised 11/20)*

First violation example #3
- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard of the Code's obligations

  Possible discipline:
  - letter of reprimand
  - fine of $10,000 or less
  - attendance at relevant education session(s)
  - suspension for ninety (90) days or less
  - any combination of the above
  - termination of membership for up to three (3) years *(Revised 11/ 20)*

Repeat violations example #1
- current violation considered relatively minor, or
- little or no harm or injury caused to others, or
- violation resulted from ignorance or misunderstanding

  Possible discipline:
  - attendance at relevant education session(s) or course
  - fine of $2,000 or less *(Revised 11/20)*

Repeat violations example #2
- current violation considered relatively serious, or
- some harm or injury caused to others, or
- violation resulted from disregard for the Code's obligation

  Possible discipline:
  - attendance at relevant education session(s) or course
  - fine of $10,000 or less
  - suspension for three (3) months or less
  - any combination of the above *(Revised 11/20)*

Repeat violations example #3
- violation considered very serious, or
- the violation was of Article 10 as interpreted by its Standards of Practice, or of Article 3 as interpreted by Standard of Practice 3-11, or
- substantial harm or injury caused to others, or
- violation resulted from knowing disregard for the Code's obligations

  Possible discipline:
  - attendance at relevant education session(s) or course
  - fine of $15,000 or less
  - suspension for six (6) months or less
  - any combination of the above
  - termination of membership for up to three (3) years *(Revised 11/20)*

In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. *(Revised 11/20)*

More serious forms of discipline (including possible termination of MLS privileges, suspension from membership for up to one [1] year, or termination of membership for up to three [3] years) may be appropriate in cases of very serious violations or in cases of repeated violations. Cases in which there is reason to believe that violations of the public trust, including demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud have occurred are considered particularly egregious. Associations are encouraged to critically examine these types of cases and recommend discipline consistent with the seriousness of these violations, their harm to consumers, and to the reputation of REALTORS® as committed to the highest level of professionalism. *(Revised 11/20)*

Important Note: These are not sentencing rules or requirements, but rather simply suggestions to guide Hearing Panels in determining appropriate discipline based both on the current violation and the violator's previous record of ethical conduct.

Appendix VIII to Part Four

Procedures for Consideration of Alleged Violations of Article IV, Section 2, Bylaws, National Association of Realtors®

Alleged violations of Article IV, Section 2, Bylaws, National Association of Realtors® will be received and reviewed by the Chairman and Vice Chairman of the Professional Standards Committee in consultation with staff and counsel. A written response will be requested from any Board so charged. Staff and counsel will then attempt to provide technical and procedural assistance to the Board cited in the complaint when deemed appropriate by the Chairman and Vice Chairman. Where the efforts of staff and counsel to effect a resolution are unsuccessful, the Chairman of the Professional Standards Committee, the Vice Chairman, and the Immediate Past Chairman will determine if the complaint, if taken as true on its face, states a possible violation of Article IV, Section 2. If the Chairman, the Vice Chairman, and the Immediate Past Chairman determine that the complaint does not state a possible violation of Article IV, Section 2, the complaint will be dismissed and not be subject to further consideration. If the Chairman, the Vice Chairman, and the Immediate Past Chairman determine that the complaint, if taken as true on its face, states a possible violation of Article IV, Section 2, the alleged violation will be considered by a special Hearing Panel of five (5) members of the Professional Standards Committee selected by the Chairman that will meet at one of the regularly scheduled meetings of the National Association or, where deemed necessary by the President, at a special meeting called for the purpose. Any challenge to the qualifications of a panel member shall be decided by the Chairman. The burden shall be on the complainant to show that the Board has failed to satisfy its obligation under Article IV, Section 2. *(Revised 05/03)*

Both the complainant and respondent may submit supporting documentation of no more than one hundred (100) pages in support of the alleged violation or in support of the Board's response to the charge. Such materials must be received by the National Association no later than thirty (30) days prior to the date of the hearing and will be provided to the members of the Hearing Panel prior to the hearing.

Both the complainant and the respondent may be represented by counsel at the hearing. The procedures to be followed at the hearing will parallel, as closely as possible, those established in the *Code of Ethics and Arbitration Manual* for the conduct of an ethics hearing, in effect at the time the complaint is received by the National Association. Any variations from the procedures established in the *Code of Ethics and Arbitration Manual* will be made at the discretion of the Chairman of the Professional Standards Committee.

The decision of the Hearing Panel will be provided to the parties no more than sixty (60) days after the hearing. The decision will be signed by a majority of the Hearing Panel members or alternatively, will be accompanied by certification from staff that the panel's decision has been reviewed by and is concurred in by a majority of the Hearing Panel members.

If either the complainant or respondent chooses to appeal the Hearing Panel's decision, a written request for appeal must be filed with the National Association within thirty (30) days of receipt of the decision by the parties. The request for appeal must specify, in detail, the bases on which the Hearing Panel's decision is being challenged. Upon receipt of a request for appeal, staff will put the matter on the agenda of the Professional Standards Committee at its next regularly scheduled meeting. The appeal hearing will be the final matter of business on the committee's agenda and will be considered in executive session. The party requesting the appeal will have fifteen (15) minutes to explain why the decision of the Hearing Panel should be modified or should not be adopted. The Chairman of the Hearing Panel will then have fifteen (15) minutes to respond. Following that, the party requesting the appeal, the Chairman of the Hearing Panel, and the non-appealing party will each have five (5) minutes to offer any rebuttal and to make any closing statement. Following this, the parties will be dismissed.

Following the closing statements, the Professional Standards Committee will remain in executive session for the purpose of determining whether the Hearing Panel's decision should be affirmed, modified, or reversed. The decision of the Professional Standards Committee will be final and binding and not subject to any further review or appeal with the sole exception that any recommendation that a Board's status as a member of the National Association be terminated shall be reported to the Board of Directors with the final decision to be made by the Directors.

In instances where no appeal is made to the decision of the Hearing Panel within the allotted thirty (30) days, the decision of the Hearing Panel will be considered final and binding and not subject to further review or appeal but shall be reported by the Chairman of the Hearing Panel to the Professional Standards Committee at the next regularly scheduled meeting for informational purposes. Any recommendation that a Board's status as a member of the National Association be terminated shall be reported to the Board of Directors with the final decision to be made by the Directors.

In the event the charter of any Board is revoked, the jurisdiction shall revert to the status of territory unassigned by the National Association, and this shall be administratively entered upon the Board jurisdiction records of the National Association, and a report shall be made to the Membership Policy and Board Jurisdiction Committee.

Appendix IX to Part Four

Presenting and Negotiating Multiple Offers

"When representing a buyer, seller, landlord, tenant, or other client as an agent, REALTORS® pledge themselves to protect and promote the interests of their clients. This obligation to the client's interests is primary, but it does not relieve REALTORS® of their obligation to treat all parties honestly." (from Article 1 of the Code of Ethics)

"REALTORS® shall submit offers and counter-offers objectively and as quickly as possible." (Standard of Practice 1-6)

Perhaps no situation routinely faced by REALTORS® can be more frustrating, fraught with potential for misunderstanding and missed opportunity, and elusive of a formulaic solution than presenting and negotiating multiple purchase or lease offers and/or counter-offers on the same property. Consider the competing dynamics. Listing brokers are charged with helping sellers get the highest price and the most favorable terms for their property. Buyers' brokers help their clients purchase property at the lowest price and on favorable terms. Balanced against the Code's mandate of honesty is the imperative to refrain from making disclosures that may not, in the final analysis, be in a client's interests. *(Revised 11/01)*

Will disclosing the existence of one offer make a second potential purchaser more likely to sign a full price purchase offer—or to pursue a different opportunity? Will telling several potential purchasers that each will be given a final opportunity to make their best offer result in spirited competition for the seller's property—or in a table devoid of offers?

What is fair? What is honest? What is to be done? Who decides? And why is there not a simple way to deal with these situations?

As REALTORS® know, there are almost never simple answers to complex situations. And multiple offer presentations and negotiations are nothing if not complex. But, although there is not a single, standard approach to dealing with multiple offers, there are fundamental principles to guide REALTORS®. While these guidelines focus on negotiation of purchase offers, the following general principles are equally applicable to negotiation of lease agreements. *(Revised 11/01)*

- Be aware of your duties to your client—seller or buyer—both as established in the Code of Ethics and in state law and regulations. *(Revised 5/01)*

  The Code requires you to protect and promote your client's interests. State law or regulations will likely also spell out duties you owe to your client.

- The Code requires that you be honest with all parties. State law or regulations will likely spell out duties you owe to other parties and to other real estate professionals. Those duties may vary from the general guidance offered here. REALTORS® need to be familiar with applicable laws and regulations.

  Be aware of your duties to other parties—both as established in the Code of Ethics and in state law and regulation.

- Remember that the decisions about how offers will be presented, how offers will be negotiated, whether counter-offers will be made and ultimately which offer, if any, will be accepted, are made by the seller—not by the listing broker. *(Revised 5/01)*

- Remember that decisions about how counter-offers will be presented, how counter-offers will be negotiated, and whether a counter-offer will be accepted, are made by the buyer—not by the buyer's broker. *(Adopted 5/01)*

- When taking listings, explain to sellers that receiving multiple, competing offers is a possibility. Explain the various ways they may be dealt with (e.g., acceptance of the "best" offer; informing all potential purchasers that other offers are on the table and inviting them to make their best offer; countering one offer while putting the others to the side; countering one offer while rejecting the other offers, etc.).

Explain the pluses and minuses of each approach (patience may result in an even better offer; inviting each offeror to make their "best" offer may produce a better offer[s] than what is currently on the table—or may discourage offerors and result in their pursuing other properties).

Explain that your advice is just that and that your past experience cannot guarantee what a particular buyer may do.

Remember—and remind the seller—that the decisions are theirs to make—not yours, and that you are bound by their lawful and ethical instructions.

- When entering into buyer representation agreements, explain to buyers that you or your firm may represent more than one buyer-client, that more than one of your clients or your firm's clients may be interested in purchasing the same property, and how offers and counter-offers will be negotiated if that happens. *(Adopted 5/01)*

Explain the pluses and minuses of various negotiating strategies (that a "low" initial offer may result in the buyer purchasing the desired property at less than the listed price—or in another, higher offer from another buyer being accepted; that a full price offer may result in the buyer purchasing the desired property while paying more than the seller might have taken for the property, etc.). *(Adopted 05/01)*

Explain to the buyer that sellers are not bound by the Code of Ethics. Sellers, in multiple offer situations, are not prohibited from "shopping" offers. Real estate brokers may, unless prohibited by law or regulation, "shop" offers. Therefore, REALTORS® assisting purchasers in formulating purchase offers should advise those purchasers it is possible that the existence, terms, and conditions of any offer they make may be disclosed to other purchasers by sellers or by sellers' representatives except where such disclosure is prohibited by law or regulation. *(Adopted 5/05)*

Remember—and remind the buyer—that the decisions are theirs to make—not yours, and that you are bound by their lawful and ethical instructions. *(Adopted 5/01)*

- If the possibility of multiple offers—and the various ways they might be dealt with—were not discussed with the seller when their property was listed and it becomes apparent that multiple offers may be (or have been) made, immediately explain the options and alternatives available to the sellers—and get direction from them.

- When representing sellers or buyers, be mindful of Standard of Practice 1-6's charge to ". . . submit offers and counter-offers objectively and as quickly as possible." *(Revised 5/01)*

- With the sellers' approval ". . . divulge the existence of offers on the property" consistent with Standard of Practice 1-15. *(Adopted 11/02)*

- While the Code of Ethics does not expressly mandate "fairness" (given its inherent subjectivity), remember that the Preamble has long noted that ". . . REALTOR® has come to connote competency, fairness, and high integrity. . . ." If a seller directs you to advise offerors about the existence of other purchase offers, fairness dictates that all offerors or their representatives be so informed.

- Article 3 calls on REALTORS® to ". . . cooperate with other brokers except when cooperation is not in the client's best interest." Implicit in cooperation is forthright sharing of information related to cooperative transactions and potential cooperative transactions. Much of the frustration that occurs in multiple offer situations results from cooperating brokers being unaware of the status of offers they have procured. Listing brokers should make reasonable efforts to keep cooperating brokers informed. Similarly, buyer brokers should make reasonable efforts to keep listing brokers informed about the status of counter-offers their seller-clients have made. *(Revised 5/01)*

- Realize that in multiple offer situations only one offer will result in a sale and one (or more) potential purchasers will be disappointed that their offer was not accepted. While little can be done to assuage their disappointment, fair and honest treatment throughout the process; coupled with prompt, ongoing and open communication, will enhance the likelihood they will feel they were treated fairly and honestly. In this regard, ". . . REALTORS® can take no safer guide than that which has been handed down through the centuries, embodied in the Golden Rule, 'Whatsoever ye would that others should do to you, do ye even so to them.' " (from the Preamble to the Code of Ethics).

(Revised 5/05)

Appendix X to Part Four

Before You File an Ethics Complaint

Background

Boards and Associations of REALTORS® are responsible for enforcing the REALTORS® Code of Ethics. The Code of Ethics imposes duties above and in addition to those imposed by law or regulation which apply **only** to real estate professionals who choose to become REALTORS®.

Many difficulties between real estate professionals (whether REALTORS® or not) result from misunderstanding, miscommunication, or lack of adequate communication. If you have a problem with a real estate professional, you may want to speak with them or with a principal broker in the firm. Open, constructive discussion often resolves questions or differences, eliminating the need for further action.

If, after discussing matters with your real estate professional or a principal broker in that firm, you are still not satisfied, you may want to contact the local Board or Association of REALTORS®. In addition to processing formal ethics complaints against its REALTOR® members, many boards and associations offer informal dispute resolving processes (e.g., ombudsman, mediation, etc.). Often parties are more satisfied with informal dispute resolution processes, as they are quicker, less costly, and often help repair damaged relationships. *(Revised 11/15)*

If, after taking these steps, you still feel you have a grievance, you may want to consider filing an ethics complaint. You will want to keep in mind that . . .

- Only REALTORS® and REALTOR ASSOCIATE®s are subject to the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.
- If the real estate professional (or their broker) you are dealing with is not a REALTOR®, your only recourse may be the state real estate licensing authority or the courts.
- Boards and Associations of REALTORS® determine whether the Code of Ethics has been violated, not whether the law or real estate regulations have been broken. Those decisions can only be made by the licensing authorities or the courts.
- Boards of REALTORS® can discipline REALTORS® for violating the Code of Ethics. Typical forms of discipline include attendance at courses and seminars designed to increase REALTORS®' understanding of the ethical duties or other responsibilities of real estate professionals. Additional examples of authorized discipline are a letter of reprimand and appropriate fines. For serious or repeated violations, a REALTOR®'s membership can be suspended or terminated. Boards and Associations of REALTORS® cannot require REALTORS® to pay money to parties filing ethics complaints; cannot award "punitive damages" for violations of the Code of Ethics; and cannot suspend or revoke a real estate professional's license. *(Revised 11/15)*
- The primary emphasis of discipline for ethical lapses is educational, to create a heightened awareness of and appreciation for the duties the Code imposes. At the same time, more severe forms of discipline, including fines and suspension and termination of membership may be imposed for serious or repeated violations.

Filing an Ethics Complaint

The local Board or Association of REALTORS® can provide you with information on the procedures for filing an ethics complaint. Here are some general principles to keep in mind.

- Ethics complaints must be filed with the local Board or Association of REALTORS® within one hundred eighty (180) days from the time a complainant knew (or reasonably should have known) that potentially unethical conduct took place or within one hundred eighty (180) days after the conclusion of the transaction or event, whichever is later (unless the Board's informal dispute resolution processes are invoked, in which case the filing deadline will momentarily be suspended).
- The REALTORS® Code of Ethics consists of seventeen (17) Articles. The duties imposed by many of the Articles are explained and illustrated through accompanying Standards of Practice or case interpretations.
- Your complaint should include a narrative description of the circumstances that lead you to believe the Code of Ethics may have been violated.
- Your complaint must cite one or more of the seventeen (17) Articles of the Code of Ethics which may have been violated. Hearing Panels decide whether the Articles expressly cited in complaints were violated—not whether Standards of Practice or case interpretations were violated.
- The local Board or Associations of REALTORS®' Grievance Committee may provide technical assistance in preparing a complaint in proper form and with proper content.

Before the Hearing

- Your complaint will be reviewed by the local Board or Association's Grievance Committee. Their job is to review complaints to determine if the allegations made, if taken as true, might support a violation of the Article(s) cited in the complaint.
- If the Grievance Committee dismisses your complaint, it does not mean they do not believe you. Rather, it means that they do not feel that your allegations would support a Hearing Panel's conclusion that the Article(s) cited in your complaint had been violated. You may want to review your complaint to see if you cited an Article appropriate to your allegations.

- If the Grievance Committee forwards your complaint for hearing, that does not mean they have decided the Code of Ethics has been violated. Rather, it means they feel that if what you allege in your complaint is found to have occurred by the Hearing Panel, that panel may have reason to find that a violation of the Code of Ethics occurred.

- If your complaint is dismissed as not requiring a hearing, you can appeal that dismissal to the Board of Directors of the local Board or Association of REALTORS®.

Preparing for the Hearing

- Familiarize yourself with the hearing procedures that will be followed. In particular you will want to know about challenging potential panel members, your right to counsel, calling witnesses, and the burdens and standards of proof that apply.

- Complainants have the ultimate responsibility ("burden") of proving that the Code of Ethics has been violated. The standard of proof that must be met is "clear, strong and convincing," defined as ". . . that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established." Consistent with American jurisprudence, respondents are considered innocent unless proven to have violated the Code of Ethics.

- Be sure that your witnesses and counsel will be available on the day of the hearing. Continuances are a privilege—not a right.

- Be sure you have all the documents and other evidence you need to present your case.

- Organize your presentation in advance. Know what you are going to say and be prepared to demonstrate what happened and **how you believe the Code of Ethics was violated**.

At the Hearing

- Appreciate that panel members are unpaid volunteers giving their time as an act of public service. Their objective is to be fair, unbiased, and impartial; to determine, based on the evidence and testimony presented to them, what actually occurred; and then to determine whether the facts as they find them support a finding that the Article(s) charged have been violated.

- Hearing Panels cannot conclude that an Article of the Code has been violated unless that Article(s) is specifically cited in the complaint.

- Keep your presentation concise, factual, and to the point. Your task is to demonstrate what happened (or what should have happened but did not), and how the facts support a violation of the Article(s) charged in the complaint.

- Hearing Panels base their decisions on the evidence and testimony presented during the hearing. If you have information relevant to the issue(s) under consideration, be sure to bring it up during your presentation.

- Recognize that different people can witness the same event and have differing recollections about what they saw. The fact that a respondent or their witness recalls things differently does not mean they are not telling the truth as they recall events. It is up to the Hearing Panel, in the findings of fact that will be part of their decision, to determine what actually happened.

- The Hearing Panel will pay careful attention to what you say and how you say it. An implausible account does not become more believable through repetition or through volume.

- You are involved in an adversarial process that is, to some degree, unavoidably confrontational. Many violations of the Code of Ethics result from misunderstanding or lack of awareness of ethical duties by otherwise well-meaning, responsible real estate professionals. An ethics complaint has potential to be viewed as an attack on a respondent's integrity and professionalism. For the enforcement process to function properly, it is imperative for all parties, witnesses, and panel members to maintain appropriate decorum.

After the Hearing

- When you receive the Hearing Panel's decision, review it carefully.

- Findings of fact are the conclusions of impartial panel members based on their reasoned assessment of all of the evidence and testimony presented during the hearing. Findings of fact are not appealable.

- If you believe the hearing process was seriously flawed to the extent you were denied a full and fair hearing, there are appellate procedures that can be invoked. The fact that a Hearing Panel found no violation is not appealable.

- Refer to the procedures used by the local Board or Association of REALTORS® for detailed information on the bases and time limits for appealing decisions. *(Revised 11/14)*

Appeals brought by ethics respondents must be based on:

(a) a perceived misapplication or misinterpretation of one or more Articles of the Code of Ethics,
(b) a procedural deficiency or failure of due process, or
(c) the nature or gravity of the discipline proposed by the Hearing Panel.

Appeals brought by ethics complainants are limited to procedural deficiencies or failure of due process that may have prevented a full and fair hearing.

Conclusion

- Many ethics complaints result from misunderstanding or a failure in communication. Before filing an ethics complaint, make reasonable efforts to communicate with your real estate professional or a principal broker in the firm. If these efforts are not fruitful, the local Board or Association of REALTORS® can share options for dispute resolution, including the procedures and forms necessary to file an ethics complaint. *(Revised 11/15)*

Appendix XI to Part Four
Ethics Mediation

Adoption of ethics mediation procedures

Ethics mediation is a process that may be adopted at the discretion of boards and associations. Ethics mediation will require adoption of these procedures (either verbatim or as amended locally) by action of the local board of directors (or as otherwise provided in the local bylaws).

Appointment of mediators

The chair of the Professional Standards Committee and/or the Board President will select one or more ethics mediators to act on behalf of the committee. Mediators should be thoroughly familiar with the Code of Ethics, state real estate regulations, and current real estate practice.

Complaints that may be mediated

Complaints brought by the public or by other REALTORS® may be mediated under these procedures. Complaints brought by the Grievance Committee may not be mediated. *(Revised 11/21)*

Initiation of ethics mediation procedures

The ethics mediation process can be initiated in two ways. First, through filing a written ethics complaint. Second, through a personal, telephone, or written inquiry or complaint generally alleging potentially unethical conduct but which (a) is not filed on the appropriate form or (b) is not specific as to which Article(s) may have been violated.

Where a written ethics complaint in the appropriate form is received, it will be reviewed by the Grievance Committee so a determination can be made whether a possible violation may have occurred or, alternatively, whether the complaint should be dismissed as not requiring a hearing.

Where an informal inquiry or general letter of complaint is received, it will not be reviewed by the Grievance Committee, but will be referred to an ethics mediator. *(Revised 11/21)*

Participation in ethics mediation is voluntary

Persons inquiring about the process for filing ethics complaints will be advised that ethics mediation is available as an alternative to a formal ethics hearing provided that all parties agree to participate, and also be advised they may decline or withdraw from mediation and have their complaint considered at a formal ethics hearing. Similarly, REALTORS® complained about have the right to decline or withdraw from mediation and to have complaints against them considered at a formal ethics hearing.

Referral of complaints to the mediator

When either a written ethics complaint in the appropriate form is reviewed by the Grievance Committee and the Grievance Committee concludes that a hearing is warranted, or when a general letter of inquiry or complaint is received, the materials received will be referred to the ethics mediator who will contact the parties to schedule a meeting at a mutually agreeable time. *(Revised 11/21)*

During the mediation session the mediator will encourage all parties to openly and candidly discuss all issues and concerns giving rise to the inquiry or complaint, and to develop a resolution acceptable to all of the parties. *(Revised 11/21)*

Nature of the mediated resolution

The mediator and the parties have considerable latitude in fashioning a mutually acceptable resolution. Resolutions can include, but are not limited to, payment of disputed funds, repairs or restoration of property, written or oral apology, or acknowledgement of a violation of the Code of Ethics. In cases where a REALTOR® acknowledges that the Code has been violated, that admission may be sufficient to resolve the matter or, alternatively, the parties may agree that discipline should be imposed. The discipline may, at the agreement of all parties, include any of the forms of discipline established in the *Code of Ethics and Arbitration Manual* and may also include payment of monies to the complainant or to a third party. Also, the parties may agree that the complainant will withdraw a complaint or agree not to file a formal, written ethics complaint in return for the respondent's action or acknowledgement. Again, any discipline imposed must be agreed to by all of the parties.

Referrals to the Grievance Committee or to state regulatory bodies

Ethics mediators cannot refer concerns they have regarding the conduct of any party to mediation to the Grievance Committee, to the state real estate licensing authority or to any other regulatory body. This prohibition is intended to ensure impartiality and avoid the possible appearance of bias. *(Revised 11/21)*

Refusal to comply with agreed upon discipline

Failure or refusal of a respondent to comply with the terms of any mutually agreed on resolution shall entitle the complaining party to resubmit the original complaint or, where a formal complaint in the appropriate form had not been filed, to file an ethics complaint. The time the matter was originally brought to the board or association's attention shall be considered the filing date for purposes of determining whether an ethics complaint is timely filed.

Associations will continue to process filed ethics complaints until withdrawn by the complainant. *(Revised 05/15)*

Confidentiality of mediation process

The allegations, discussions, and decisions rendered in ethics mediation proceedings are confidential and shall not be reported or published by the board, any member of a tribunal, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

Ombuds, Mediators and Participation in a Tribunal

Although ombuds and mediators who serve in either capacity are not part of a tribunal, they nonetheless may not participate in the deliberation of any tribunal on the same matter for which they provided the ombuds or mediation service. An ombuds may not serve as a mediator on the same matter for which they provided the ombuds service. *(Adopted 11/22)*

Board or State Association

Address | City | State | Zip

Ethics Mediation Resolution Agreement

The undersigned, pursuant to the ethics mediation guidelines incorporated into the

______________________________ professional standards procedures, have
Board or State Association

participated in and agree to the following resolution:

The undersigned agree to be bound by the above resolution and waive any and all future rights to file an ethics complaint, litigate the matter, or pursue a complaint in any other forum. If an ethics complaint has been filed, the complainant agrees to withdraw that complaint and not to pursue a complaint in any other forum. We further hold the ______________________ (Board or State Association) harmless, acknowledge that we were advised of our right to attorney representation at the mediation and attorney review of the Resolution Agreement, and expressly waive any and all liability of the ____________________ (Board or State Association) or claim that we have against the _________________________ (Board or State Association) arising out of the manner in which the ________________ (Board or State Association) conducted the ethics mediation, or the resolution of the dispute reached as a result of the _________________'s (Board or State Association) ethics mediation procedures. Further, if this resolution agreement is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney's fees.

Name (Type/Print) Signature Date

Name (Type/Print) Signature Date

As Mediation Officer of the____________________ (Board or State Association), I do attest that I was present during the ethics mediation process and that the above resolution agreement was voluntarily entered into by the parties to the dispute.

Name (Type/Print) Signature Date

(*Adopted 5/16*)

Appendix XII to Part Four

Appropriate Interpretation of Standard of Practice 10-5 and Statement of Professional Standards Policy 29

Standard of Practice 10-5 prohibits REALTORS® from using harassing speech, hate speech, epithets or slurs based on the protected classes of Article 10. Statement of Professional Standards Policy 29 provides that REALTORS® are subject to disciplinary action with respect to all of their activities, except in those circumstances in which the Code of Ethics only applies to real estate-related activities by virtue of its Articles or Standards of Practice. *(Revised 5/21)*.

To assist Hearing Panels in the appropriate interpretation and application of Standard of Practice 10-5 of the Code of Ethics and Statement of Professional Standards Policy 29, the Professional Standards Committee of the National Association provides the following for consideration by Hearing Panels when asked to determine whether a violation of Article 10 as supported by Standard of Practice 10-5 has occurred.

While the overall focus of Standard of Practice 10-5 is on what might be loosely termed "offensive" or "discriminatory" speech, Hearing Panels should be clear that the Standard of Practice is narrowly limited to conduct related to the requirements of equal professional service and that a REALTOR® refrain from being a party to a plan or agreement to discriminate on the basis of the protected classes of Article 10. Hearing Panels should also be fully aware of the nature and scope of the Standards of Practice under Article 10 and their relationship to fair housing law as described in Appendix III to **Part Four** of the *Code of Ethics and Arbitration Manual*. As described in Appendix III, Article 10 and its Standards of Practice fully integrate the five basic fair housing obligations that were recognized by NAR's Code of Fair Housing Practices before it was sunset. *(Revised 5/21)*

Hearing Panels should note that while all of the Standards of Practice under Article 10 inform them as to the interpretation and application of Standard of Practice 10-5, Standard of Practice 10-3 is particularly analogous in its application to discriminatory speech in advertising based on the protected classes of Article 10.

Standard of Practice 10-5 is not focused on types of speech that might be subjectively deemed "offensive" or "discriminatory" by one person and not another. The Standard of Practice is based on very particular types of speech that are directly connected to the protected classes of race, color, religion, sex, disability, familial status, national origin, sexual orientation or gender identity under Article 10. Only the use of harassing speech, hate speech, epithets and slurs **based on** the protected classes of Article 10 are prohibited. The terms "harassing speech," "hate speech," "epithets," and "slurs" can be commonly understood by use of a dictionary as well as other easily available references. *(Revised 11/22)*

For example, NAR's Code of Conduct and Anti-Harassment Policy clearly defines "harassment" and "sexual harassment."

> *Harassment includes inappropriate conduct, comment, display, action, or gesture based on another person's sex, color, race, religion, national origin, age, disability, sexual orientation, gender identity, and any other protected characteristic.*
>
> *Examples of harassment include, but are not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and the display or circulation of written or graphic material that denigrates or shows hostility toward an individual or group based on a protected characteristic.*

"Sexual Harassment" includes not only physical acts but also includes verbal and non-verbal/non-physical acts.

> *Sexual harassment can be:*
>
> - *Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, or threats.*
> - *Non-Verbal: Sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, or obscene gestures. …*

Harassing speech in Standard of Practice 10-5 is similar to the definition of harassment in NAR's Code of Conduct and Anti-Harassment Policy, except that Standard of Practice 10-5 is limited to the protected classes under Article 10. Hearing Panels should look to this existing information on harassment to determine whether harassing speech has occurred and then look to determine whether the harassing speech was based on one of the protected classes. *(Revised 5/21)*

In similar fashion, Merriam Webster's Dictionary defines "hate speech," "epithets," and "slurs" as follows:

> Hate Speech: *speech that is intended to insult, offend, or intimidate a person because of some trait (as race, religion, sexual orientation, national origin, or disability).*
>
> Epithet: ***1a:*** *a characterizing word or phrase accompanying or occurring in place of the name of a person or thing;* **b:** *a disparaging or abusive word or phrase*
>
> Slur: ***1a:*** *an insulting or disparaging remark or innuendo: ASPERSION;* ***b:*** *a shaming or degrading effect: STAIN, STIGMA*

Standard of Practice 10-5 should be interpreted as applying equally to speech, images, and symbols. *(Adopted 5/21)*

Again, Hearing Panels must look to whether the hate speech, epithet or slur is based on race, color, religion, sex, disability, familial status, national origin, sexual orientation or gender identity and not on some other non-protected characteristic. *(Revised 11/22)*

Under Statement of Professional Standards Policy #29, REALTORS® are subject to the Code of Ethics' standards in all of their activities. Thus, a violation of Article 10, as supported by Standard of Practice 10-5, can occur when a REALTOR® uses harassing speech, hate speech, epithets and slurs based on the protected classes in any media or context, regardless of whether related to their activities in the real estate business or their identification as a REALTOR®.

(Adopted 11/20)

Part Five — Conduct of an Ethics Hearing

An ethics hearing must be conducted in a manner which is fair to all parties. This means that the parties must know their rights and responsibilities in advance so they may properly prepare and present their positions. Procedures are required to assure an orderly hearing. But procedures may and should be modified as interests of justice and truth dictate. However, in modifying established procedures, care must be taken to assure that the rights and interests of all parties are protected. For this reason, variation from prescribed procedures should be reviewed with Board counsel and counsel for the parties prior to implementation.

Following are four (4) outlines. The first and second are outlines of procedural information of interest and concern primarily to the parties involved. This information should be provided to them well in advance of any hearing (Form #E-9 or Form #E-9a, as appropriate, **Part Six**). The third outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over ethics hearings. The fourth outline is primarily of interest to tribunals and particularly to Chairpersons who preside over ethics appeals.

Outline of Procedure for Ethics Hearing

✍ ________________________________ **Board of REALTORS®**

State of ____

(To be transmitted in advance to both parties.)

Remote Testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 11/21)*

✍ **Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing. *(Revised 11/14)*

✍ **Recording the hearing:** The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties. *(Revised 11/21)*

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel. *(Revised 11/21)*

Due process procedure: (Chairperson's Procedural Guide of an Ethics Hearing is available in the *Code of Ethics and Arbitration Manual*.)

The hearing will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The complaint will be read into the record.

(3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.

(4) Opening statements, first by complainant, then by respondent, briefly explaining the party's basic position.

(5) The parties will be given an opportunity to present evidence and testimony in their behalf and they may call witnesses. All parties appearing at the hearing may be called as witnesses without advance notice. *(Revised 11/14)*

(6) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.

(7) The panel members may ask questions at any time during the proceedings.

(8) The Chairperson may exclude any questions which he or she deems irrelevant or argumentative.

(9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.

(10) Adjournment of hearing.

(11) The Hearing Panel will go into executive session to decide the case. *(Revised 11/12)*

Findings in ethics hearing: The finding and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedure of **Part Four,** Section 23 of this Manual.

Use of counsel: A party may be represented in any hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing. *(Revised 11/96)*

Outline of Procedure for Ethics Hearing Involving a Complaint and a Counter-Complaint

________________________________ **Board of REALTORS®**

State of ____

(To be transmitted in advance to both parties.)

Remote Testimony: Hearings may be held in person, remotely, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to ethics hearings may be permitted to participate remotely in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings when all parties must participate virtually. *(Revised 11/21)*

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. If the request is approved by the chair, all parties shall be advised of the date of the rescheduled hearing. *(Revised 11/14)*

✍ **Recording the hearing:** The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties. *(Revised 11/21)*

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel. *(Revised 11/21)*

Due process procedure: (Chairperson's Procedural Guide for Ethics Hearings Involving a Complaint and a Counter-Complaint is available on-line at nar.realtor.)

The hearing will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The complaint and counter-complaint will be read into the record.

(3) The testimony of all parties and witness(es) will be sworn or affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at the hearing may be called as witnesses without advance notice. *(Revised 11/14)*

(4) Complainant/counter-respondent will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that he feels have been violated, explaining how the respondent/counter-complainant violated each Article and refuting the contention that he violated any provisions of the Code of Ethics.

(5) Respondent/counter-complainant will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that she feels have been violated, explaining how the complainant/counter-respondent violated each Article and refuting the contention that she violated any provision of the Code of Ethics.

(6) Complainant/counter-respondent presents his/her case and defenses by offering testimony and evidence from himself and/or his witness(es) to support the allegations of violations of the Code of Ethics by the respondent counter-complainant and refuting the allegations made by the counter-complainant.

   (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

   (b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and rebutting the complainant's contention that she violated the Code of Ethics.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and/or refute the allegations made by the respondent/counter-complainant.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support the allegations of violations of the Code of Ethics by the complainant counter-respondent and/or refute the allegations made by the complainant/counter-respondent.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondents and/or of the complainant/counter-respondent's witness(es).

(11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).

(12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/counter-complainant (respectively) may present uninterrupted closing statements.

(13) The Chair will then adjourn the hearing.

(14) The Hearing Panel will go into executive session to decide the case.

Findings in ethics hearing: The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedure of **Part Four,** Section 23 of the *Code of Ethics and Arbitration Manual*.

Testimony: Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which he or she deems irrelevant or argumentative.

Use of counsel: A party may be represented in any hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised all matters discussed are strictly confidential.

(Adopted 11/98, Amended 11/12, 11/14, and 11/21)

Chairperson's Procedural Guide: Conduct of an Ethics Hearing

______________________________ **Board of REALTORS®**

State of ______________________________

(Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed.)

(Ask all parties [including witnesses] to come into the hearing room.)

Display: Board banner and the American flag

Seating arrangements: See **Part Six,** Form #E-16 of this Manual for recommended seating arrangements.

Start promptly: Rap gavel to open meeting.

Chairperson's opening statement and conduct of hearing: Ladies and gentlemen, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for the ______________________ Board of REALTORS® in accordance with the procedures as set forth in the Board's bylaws in matters concerning alleged unethical conduct of a Board Member or Members, or in the arbitration of a business dispute arising out of the real estate business as defined in the bylaws of the Board. The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an ethics proceeding, and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding is to be clearly distinguished from an arbitration proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an ethics proceeding.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the ______________ Board of REALTORS® and has been duly appointed by the Board President and approved by the Board of Directors. At this time, I would like to introduce members of this panel.

(1) My name is ______________________________, and I will serve as Chairperson of this panel.

(2) The other members of this panel are:
______________________, ______________________,
______________________, and ______________________.

(3) Present at this hearing is ______________________, the complainant ______________________________,

(If the complainant is accompanied by an attorney and/or witnesses, they should be introduced at this time.)

______________________, ______________________,
______________________, and ______________________.

(If the complainant is represented by counsel, and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If none, have the respondent sign a statement to that effect.)

(4) Also present at this hearing is ____________________, the respondent, and his/her REALTOR® principal, __________________, consistent with Section 13 of the *Code of Ethics and Arbitration Manual* (if applicable).

(If the respondent is accompanied by counsel and/or witnesses, they should be introduced at this time.)

______________________, ______________________,
______________________, and ______________________.

(If the respondent is represented by counsel, and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If none, have complainant sign a statement to that effect.)

(5) Also present at this hearing is ______________________, the recording Professional Standards Administrator for the ______________________ Board of REALTORS®, and (if appropriate) _____________, the court reporter present to transcribe these proceedings.

(Or, alternatively: This hearing is being mechanically recorded.)

(If an attorney representing the Board is present, he/she should be introduced at this time.)

____.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purposes of appeal, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Basis of hearing: This hearing has been established to consider the complaint of ______________________ against ______________________, alleging violation of Article(s) ______________________ of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®.

The complaint as filed by the complainant is as follows:

(Read the Article[s] the respondent has been charged with violating into the record.)

This panel is not dealing with questions of law, and it is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the panel that is fair to all of the parties. The panel is governed and directed by the bylaws of the ___________ Board of REALTORS® and the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted and ruled on by this panel as to the procedures to be followed during this hearing.

(1) All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during this hearing on the relevance of testimony being given or questions being directed to any party or his/her representative or to witnesses providing testimony. All parties and witnesses will be asked to swear or affirm that testimony given is the truth to the best of their knowledge.

(If no counsel is present, proceed to 3.)

(2) A party may be represented by legal counsel or by a REALTOR® of their choosing (or both). However, no party may refuse to directly respond to requests for information or questions addressed to him/her by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of his/her client if the panel desires direct testimony. Counsel is present to advise and consult with his/her client, and to speak for him/her subject to appropriate rulings or determinations by the panel. This panel will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.

(3) The panel may rule at any time on the admissibility of evidence. As Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter and date.

(4) The members of this panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Board counsel concerning such rulings.

(5) At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn or make appropriate affirmation in lieu of being sworn.

(The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.)

Swearing: Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear . . . "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?" Let the record show that all parties have answered in the affirmative.

(And/or if needed)

Affirmation: Raise your right hand and, following the question I will pose, answer in the affirmative if you do so affirm. "Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?" Let the record show that ______________________________ has/have answered in the affirmative.

(At this time, the Chairperson should excuse any witnesses and ask them to wait outside until called, and ask the remaining parties to be seated.)

Outline of procedure for hearing: Both the complainant and the respondent were mailed a copy of the Outline of Procedure for an Ethics Hearing (**Part Six,** Form #E-9 of this Manual). Did each of you receive the Outline?

(If yes) Let the record show that both the complainant and respondent have stated they did receive the Outline.

(If no, the party should be given a copy of the Outline and the Chairperson should determine whether that party has any objections to proceeding.)

Do you have any questions concerning that Outline of Procedure?

(If none) Let the record show that neither the complainant nor the respondent have any questions concerning the Outline of Procedure for an Ethics Hearing.

We shall now proceed with the hearing.

Opening statement by parties or counsel: Each party or the party's counsel shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party's position. You will have an opportunity to present your entire case at a later time during this hearing.

Opening statement by complainant

Opening statement by respondent

Presentation of full case by complainant: The complainant will now state his/her case and present any evidence or witnesses that he/she may desire.

Cross-examination by respondent

Questions from panel members

Presentation of full case by respondent: The respondent will now state his/her case and present any evidence or witnesses that he/she may desire.

Cross-examination by complainant

Questions from panel members

Closing statement by complainant: At this time, both the complainant and the respondent will be given an opportunity to make a summary or closing statement if they so desire. The complainant's closing statement will be heard first.

Closing statement by respondent

Closing statement by Panel Chairperson: Do each of you feel that this hearing has been conducted fairly?

(If yes) Let the record show that both the complainant and the respondent have indicated that they feel this hearing has been conducted fairly.

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

(If yes) Let the record show that both the complainant and the respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

(If any party answers "no," ask him/her to state any concern and, if there's any merit to the concern, take steps to remedy any possible deficiency.)

Confidential nature of hearing: Before we adjourn the hearing of this panel, all persons present are advised that the report and findings of this panel are considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required, and to the Board of Directors of the ____________________________ Board of REALTORS® as directed by provisions of **Part Four,** Sections 22 and 23 of this Manual or as otherwise specified in the Manual. Upon final action by the Directors, the findings or conclusions of this panel shall be disseminated to the parties by the Professional Standards Administrator, as directed by **Part Four,** Section 23 of this Manual. The parties will be notified of the decision within the required time after this hearing is adjourned. You are also reminded that any recording or transcription of these proceedings can only be used for purposes of appeal and that all other uses, including use in other ethics or arbitration hearings, is expressly prohibited.

Adjournment: There being no further business to be considered in this hearing, this portion of the hearing stands adjourned.

Proceeding following hearing — executive session: *(After adjournment, the panel will remain in executive session and frame a report of finding and opinion to set forth the decision. The panel will follow explicitly the procedure set forth in the* Code of Ethics and Arbitration Manual *as to opportunity for an appeal if provided. Boards should consider having Board counsel review ethics decisions prior to any action of the panel becoming final or effective. This will serve to protect the Board by minimizing vulnerability to litigation.)*

(Revised 11/22)

Chairperson's Procedural Guide: Conduct of an Appeal Hearing (Ethics)

______________________________ Board of REALTORS®

State of ____

(Ask the Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed. Also note that ethics appeals are not to be recorded.)

(Ask all parties to come into the hearing room.)

Display: Board banner and the American flag

Seating arrangements: See **Part Six,** Form #E-16 of this Manual for recommended seating arrangements.

Start promptly: Rap gavel to open meeting.

Chairperson's opening statement: Ladies and gentlemen, I now call this appeal hearing to order. The professional standards procedures of the ___________ Board of REALTORS® provide for the right to appeal the decisions rendered by ethics Hearing Panels. The complainant in the original ethics hearing may appeal based only on alleged procedural deficiencies that may have deprived the complainant of the opportunity for a full and fair hearing or other lack of procedural due process. The respondent in the original ethics hearing may appeal the decision and/or recommendation for discipline on the basis of (1) misapplication or misinterpretation of an Article(s) of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®, (2) alleged procedural deficiency or any lack of procedural due process, or (3) the discipline recommended by the Hearing Panel. This particular appeal will be heard by (the Board of Directors) (or) (a panel of Directors appointed by the President) (or) (the Board's Executive Committee), hereinafter referred to as the Appeal Hearing Tribunal.

Basis of this hearing: The particular matter to be considered by this Appeal Hearing Tribunal is an appeal of the decision of the ethics Hearing Panel composed of:
_________________________, _________________________,
_________________________, _________________________,
and chaired by ____________________________, at an ethics hearing conducted on ____________________, 20_____. The basis of the original ethics hearing was a complaint brought by
_________________________, _________________________,
and ________________________, the complainant(s), against
_________________________, _________________________,
and _________________________, the respondent(s), alleging violation of Article(s) __________ of the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The decision was as follows:

*(Read the decision of the ethics Hearing Panel of the Professional Standards Committee [**Part Six,** Form #E-11 of this Manual].)*

Prior to the original ethics hearing, the complaint was reviewed by (the Board's Grievance Committee) (or) (a panel of the Board's Grievance Committee members) and referred to the Board's Professional Standards Committee for a hearing.

Authority: The Appeal Hearing Tribunal present here today is a body duly constituted under the authority of the bylaws of the __________________________ Board of REALTORS®.

Introduction of the Appeal Hearing Tribunal: At this time, I would like to introduce the members of this Appeal Hearing Tribunal. My name is __________________________, and I will serve as Chairperson. The other members of this Appeal Hearing Tribunal are _____________________________,
_________________________, _________________________,
_________________________, _________________________,
_________________________, _________________________,
and _______________________.

Disqualification: Anyone who was a party to the original ethics hearing, a member of the Grievance Committee present during the meeting when the complaint was reviewed, a member of the original ethics Hearing Panel, or who was otherwise involved in this matter prior to the appeal is disqualified from serving on this Appeal Hearing Tribunal. Furthermore, anyone who is related by blood or marriage to any party to the hearing or anyone related by blood or marriage to a REALTOR® acting as counsel for either the complainant or respondent, or anyone who is an employer, partner, employee, or is associated in business with any of the parties or a REALTOR® acting as counsel is also disqualified. I will now ask the members of the Appeal Hearing Tribunal if they know of any reason why they should be disqualified.

(If none) The members of the Appeal Hearing Tribunal have not indicated any reason why they are not qualified to serve. Although the parties have been previously notified of their right to challenge members of this Appeal Hearing Tribunal, I will now ask the parties if they are aware of any reason why any member of this Appeal Hearing Tribunal is not qualified to serve.

(If none) The parties have not indicated any reason why any member of this Appeal Hearing Tribunal is not qualified to serve.

Additional introductions: Also present at this appeal hearing is _______________________, _____________________, and _______________________, the complainant(s) in the original ethics hearing; _________________, ___________________, and __________________________, the respondent(s) in the original ethics hearing; _____________________, the original ethics Hearing Panel Chairperson; and __________________, the Professional Standards Administrator for the _________________ Board of REALTORS®.

(If any attorneys are present, they should be introduced at this time.)

_______________________, _______________________,
_____________________, and _______________________.

Appeal limitations: In this appeal hearing we will consider the arguments of ____________________, hereinafter referred to as the appellant, who filed the Request for Appeal. The appeal is further limited to the basis (bases) set forth in writing in the Request for Appeal, which is as follows.

*(Read the Request for Appeal, [**Part Six,** Form #E-13 of this Manual].)*

Outline of procedure: At this time I would like to explain the procedure for this appeal hearing. First, the original ethics Hearing Panel Chairperson (or a representative from the original panel) will summarize the case (or provide copies of transcripts). Then, the appellant will have an opportunity to offer any corrections or modifications to the summary (or transcripts), to introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and to explain the basis (bases) for the appeal. Next, the original Hearing Panel Chairperson and/or other parties to the original ethics hearing will have an opportunity to explain why the original ethics Hearing Panel's decision should be upheld. At any time during this proceeding, members of the Appeal Hearing Tribunal may ask questions; however, parties have no right of cross-examination. Finally, following the appeal hearing, the Appeal Hearing Tribunal will go into executive session to render a decision. Do any of the parties have any questions regarding the outline of procedure?

(If none) None of the parties has any questions regarding the outline of procedure.

Guidelines: This Appeal Hearing Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in courts. This Appeal Hearing Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Appeal Hearing Tribunal that is fair to all of the parties. After the Appeal Hearing Tribunal has heard all of the evidence and testimony, we will go into executive session to render our decision. The decision will be based solely upon the arguments, evidence, and testimony offered during this appeal hearing. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. This Appeal Hearing Tribunal may rule at any time during this Appeal Hearing on the relevance of testimony being given. All parties giving testimony will be asked to swear or affirm that testimony given is the truth to the best of their knowledge. A party may be represented by counsel. This Appeal Hearing Tribunal need not accept the statements of counsel as being the statements of their clients if it desires direct testimony. Counsel is present to advise and consult with their clients, and to speak for them subject to appropriate rulings or determinations by this Appeal Hearing Tribunal. This Appeal Hearing Tribunal will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Appeal Hearing Tribunal or any party to the proceedings.

Swearing: At this time I will request that all persons present in the room who expect to testify at this appeal hearing stand and be sworn or make appropriate affirmation in lieu of being sworn. (The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.) Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so swear. "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?"

(If yes) All parties have answered in the affirmative. Please be seated.

(And/or if needed)

Affirmation: Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so affirm. "Do you affirm that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth?"

(If yes) All parties have answered in the affirmative. Please be seated.

The appeal hearing: We shall now proceed with the appeal hearing.

Presentation by the original ethics Hearing Panel Chairperson: At this time the original ethics Hearing Panel Chairperson will summarize the case (or provide copies of transcripts), unless the sole basis for appeal is a deprivation of due process (in which case the Chairperson will address that basis of appeal only).

Presentation by the appellant: At this time, the appellant may offer any corrections or modifications to the original ethics Hearing Panel Chairperson's summary (or) (the transcript), introduce supporting evidence and/or the statements of any other parties to the original ethics hearing, and explain the basis (bases) for the appeal.

Rebuttal by the original ethics Hearing Panel Chairperson: At this time the original ethics Hearing Panel Chairperson will have an opportunity to explain why the original ethics Hearing Panel's decision should be upheld by this Appeal Hearing Tribunal.

Testimony of other parties to the original ethics hearing: At this time, any other parties to the original ethics hearing will have an opportunity to explain why the decision of the ethics Hearing Panel should be upheld by the Appeal Hearing Tribunal. Any party testifying must restrict his/her discussion to the issues raised in the appeal.

Questions from panel members: The members of this panel are authorized to ask questions at any time during this appeal.

Confirmation of fairness/opportunity to testify: Do each of you feel that this appeal hearing has been conducted fairly?

(If yes) All parties to this appeal hearing have indicated that they feel this appeal hearing has been conducted fairly.

Have each of you had an adequate opportunity to state why you believe that the decision of the original ethics Hearing Panel should or should not be upheld by this Appeal Hearing Tribunal?

(If yes) The parties have indicated that they have had an adequate opportunity to state why they believe the decision of the original ethics Hearing Panel should or should not be upheld by this Appeal Hearing Tribunal.

Closing statements: The decision of this Appeal Hearing Tribunal is final. Before we adjourn this appeal hearing, all persons present are advised that the report and findings of this Appeal Hearing Tribunal are considered confidential. Upon final action by this Appeal Hearing Tribunal, the Professional Standards Administrator shall disseminate to the complainant and the respondent in the original ethics hearing, the Chairperson and members of the original ethics Hearing Panel, Board legal counsel, the Professional Standards Administrator of any other Board of REALTORS® in which the respondent holds membership, and any governmental agency, as directed by the Board of Directors, such notice of the action as the Board President deems appropriate under the circumstances to effectuate the discipline prescribed, provided, however, that the nature, form, content, and extent of the notice shall be specifically approved by Board legal counsel prior to dissemination.

Adjournment: There being no further business to be considered in this appeal hearing, this portion of the appeal hearing stands adjourned.

Executive session: The Appeal Hearing Tribunal will now go into executive session.

Procedural note: (*The Appeal Hearing Tribunal goes into executive session to deliberate the issues raised on appeal. The Appeal Hearing Tribunal may adopt or modify the recommendation of the original Hearing Panel, including the discipline imposed; or, alternatively, the Appeal Hearing Tribunal may dismiss the complaint if it concludes that the findings of fact do not support the original Hearing Panel's conclusion as to unethical conduct. If the Appeal Hearing Tribunal is concerned with a possible procedural deficiency, it may refer the case back to the Professional Standards Committee for a new hearing before a different ethics Hearing Panel. If the Appeal Hearing Tribunal is concerned with the appropriateness of the recommendation for discipline, it may impose an alternative discipline that does not exceed that discipline recommended by the original ethics Hearing Panel or, alternatively, the Appeal Hearing Tribunal may refer the decision back to the original ethics Hearing Panel for further consideration. If the matter is referred back to the original ethics Hearing Panel for further consideration, it should be accompanied by the Appeal Hearing Tribunal's concerns regarding the proposed discipline. However, while the Appeal Hearing Tribunal may recommend that the discipline be increased, the original ethics Hearing Panel is not required to increase the discipline beyond that originally recommended.)*

Declaratory relief: *(If the Appeal Hearing Tribunal has reason to believe the decision will not be accepted and litigation may ensue, it should consider making disciplinary action effective only after a favorable decision in a suit for declaratory relief filed by the Board confirming the propriety of its action. This will minimize any legal vulnerability to the Board.)*

(Revised 11/22)

Part Six — Specimen Forms

The Manual refers to certain forms used in connection with ethics proceedings conducted under it. Following are specimens of such forms.

They should not be used until they are first reviewed by Board counsel to assure that they conform to state law and to any special requirements established by the Board. (NOTE: The State Association may wish to have State Association legal counsel review the contents of the Manual, including the Specimen Forms, to adapt it to comply with state law, and to recommend adoption of the amended Manual by all local Boards within the state.) The Specimen Forms are intended to provide a format and may require further adaptation and modification by the local Board prior to implementation and use. For example, Form #E-11, Decision of the Ethics Hearing Panel of the Professional Standards Committee, should include adequate space for a comprehensive statement of the "Findings of Fact" and the "Decision and Recommendation for Disciplinary Action."

After such review and modification as necessary, the local Board or State Association may add to the forms the appropriate identification data of the Board and reproduce them in quantities desired by the Board.

General Instructions and Information for Filing and Replying to Ethics Complaints

(1) Complaints must be typewritten and submitted with a sufficient number of copies to enable the Board to provide one to each respondent plus one copy for the Board's records. Any reply must be typewritten and submitted with a sufficient number of copies to enable the Board to provide one to each complainant plus one copy for the Board's records. Additional copies of the complaint and reply should be furnished by the complainant and respondent as requested by the Professional Standards Administrator. If the complainant is a member of the public, extra copies of the complaint should not be requested.

(2) Complaints will be referred to the Professional Standards Administrator, and by the Professional Standards Administrator to the Chairperson of the Grievance Committee. If the Grievance Committee finds the matter to constitute a proper cause of action, it will be referred to the Professional Standards Administrator to arrange a hearing; if not found to constitute a proper cause of action, it will be returned to the complainant with the decision of the Grievance Committee, together with information advising the complainant of the procedures by which the Grievance Committee's decision may be appealed to the Board of Directors.

(3) If there is to be a hearing, respondent will have fifteen (15) days from when the request for response was transmitted, to reply. Copy of the reply will be sent to complainant, the Board President, and the Professional Standards Committee Chairperson. The date for hearing will be set and all parties will be notified of the date and place of hearing at least twenty-one (21) days in advance. *(Revised 11/14)*

(4) If no reply is received from respondent within fifteen (15) days from when the request for response was transmitted, the date, time, and place of hearing will be set. *(Revised 11/14)*

(5) All parties may be represented by counsel, provided that notice of intention to be represented is transmitted to all other parties and to the Hearing Panel at least fifteen (15) days prior to the hearing. Failure to provide timely notice may result in a continuance of the hearing.

(6) It is the responsibility of each party to arrange for his witnesses to be present at the hearing. All parties appearing at a hearing may be called as a witness without advance notice. *(Revised 11/14)*

(7) Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. *(Adopted 05/15)*

(8) Either party may file with the Professional Standards Administrator, within ten (10) days from the date the names of the members of the Professional Standards Committee are transmitted to the parties, a written request for disqualification of any potential member of the Hearing Panel for any of the following reasons:

(a) is related by blood or marriage to the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(b) is an employer, partner, or employee, or in any way associated in business with the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(c) is a party to the hearing, or a party or a witness in another pending case involving complainant or respondent

(d) knows any reasons acceptable to the Hearing Panel or tribunal which may prevent him from rendering an impartial decision *(Revised 11/14)*

(9) The notice of hearing will contain names of members of the tribunal who will hear the case and should be accompanied by an "Outline of Procedure for Ethics Hearing." Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. *(Revised 11/14)*

(10) The parties shall not discuss the case with any member of the Hearing Panel or the Board of Directors at any time prior to announcement of a decision in the case.

(11) No hearing will be held in the absence of a complainant. An ethics hearing may proceed in the absence of a respondent.

(Revised 05/15)

Form #E-1

____
Board or State Association

____
Address City State Zip

Ethics Complaint

To the **Grievance Committee** of the ____
Board or State Association

Filed ______________________________, 20__________

______________________________ ______________________________

______________________________ ______________________________
Complainant(s) Respondent(s)

Complainant(s) charge(s):

An alleged violation of Article(s) ______________________________________ of the Code of Ethics and/or other membership duty as set forth in the bylaws of the Board in ________________________ and alleges that the above charge(s)
Article, Section

(is/are) supported by the attached statement, which is signed and dated by the complainant(s) and which explains when the alleged violation(s) occurred and, if a different date, when the complainant(s) first knew about the alleged violations.

This complaint is true and correct to the best knowledge and belief of the undersigned and is filed within one hundred eighty (180) days after the facts constituting the matter complained of could have been known in the exercise of reasonable diligence or within one hundred eighty (180) days after the conclusion of the transaction, or event, whichever is later.

Date(s) alleged violation(s) took place:____

Date(s) you became aware of the facts on which the alleged violation(s) (is/are) based: _________________________________

I (we) declare that to the best of my (our) knowledge and belief, my (our) allegations in this complaint are true.

Are the circumstances giving rise to this ethics complaint involved in civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency?

❒ Yes ❒ No

You may file an ethics complaint in any jurisdiction where a REALTOR® is a member or MLS participant. Note that the REALTORS® Code of Ethics, Standard of Practice 14-1 provides, in relevant part, “REALTORS® shall not be subject to disciplinary proceeding in more than one Board of REALTORS® . . . with respect to alleged violations of the Code of Ethics relating to the same transaction or event.”

Have you filed, or do you intend to file, a similar or related complaint with another Association(s) of REALTORS®?

❒ Yes ❒ No

If so, name of other Association(s): ____________________________________ Date(s) filed: _______________________

I understand that should the Grievance Committee dismiss this ethics complaint in part or in total, that I have twenty (20) days from transmittal of the dismissal notice to appeal the dismissal to the Board of Directors.

Complainant(s):

______________________________ ______________________________
Type/Print Name Signature

______________________________ ______________________________
Type/Print Name Signature

____
Address

______________________________ ______________________________
Phone Email

(Revised 11/15)

Form #E-2

____
Board or State Association

____
Address City State Zip

Notice to Respondent (Ethics)

In the case of ______________________________ vs. ______________________________

To ____ (respondent).

Attached hereto is a copy of a complaint which names you as respondent, as filed with this Board and referred to a Hearing Panel

for hearing as a matter of an alleged violation of Article(s) _______________ of the Code of Ethics or other membership duty as set forth in the bylaws of the Board.

Please be advised that, under the bylaws of the Board, you have fifteen (15) days from the transmittal of this request to transmit a response to, or file your reply at, the office of the Board at the address above.

Your reply must be typewritten, with original and ______ copies for this office, and must be signed and dated.

Respectfully submitted,

______________________________ ______________________________, Professional Standards Administrator
Type/Print Signature

____
Board or State Association

Dated: ______________________________, 20__________

(Revised 11/14)

Form #E-3

____
Board or State Association

____
Address City State Zip

Reply (Ethics)

To the **Professional Standards Committee** of the

____
Board or State Association

Filed ______________________, 20________

________________________ ________________________

________________________ ________________________
Complainant(s) Respondent(s)

in a matter of alleged violation of the Code of Ethics or other membership duty as set forth in the bylaws of this Board.

Respondent(s) replies and substantiates such reply by the following facts and/or attached statement:

This is true and correct to the best knowledge and belief of the undersigned. I (we) declare that to the best of my (our) knowledge and belief, the statements contained in this Reply are true and correct.

Boards or Associations of REALTORS® where I hold or have held membership in the preceding three (3) years:

____

I understand that, if found in violation of the Code of Ethics or other membership duty, a respondent will be assessed an administrative processing fee of __________*.

Respondent(s):

________________________ ________________________
Type/Print Name Signature

____
Address

________________________ ________________________
Phone Email

________________________ ________________________
Type/Print Name Signature

____
Address

________________________ ________________________
Phone Email

(Revised 11/16)

*Fee not to exceed $500 and may not be assessed unless the Board of Directors has established policy to assess this fee against respondents found in violation of the Code of Ethics or other membership duty.

Form #E-4

____

Board or State Association

____

Address City State Zip

Grievance Committee Request for Information (Ethics Complaint)

To ____,

named by ______________________________ as respondent.

Attached hereto is a copy of a complaint which names you as respondent, as filed with this Board and referred to the Grievance Committee for review, in accordance with Section 20 of the Board's *Code of Ethics and Arbitration Manual*.

Please be advised that you have fifteen (15) days from transmittal of this notice to transmit to, or file your reply at, the address above. Your reply

must be typewritten, with original and ______ copies for this office, and must be signed and dated.

Failure to provide a response may result in the complaint being forwarded for a hearing and may also result in the Grievance Committee's filing of a complaint against you, alleging a violation of Article 14 of the Code of Ethics for failure to submit pertinent facts to a proper Tribunal, pursuant to Section 20 of this Manual.

Respectfully submitted,

_________________________ _________________________, Professional Standards Administrator

Type/Print Signature

____

Board or State Association

Dated: ______________________, 20__________

(Revised 11/14)

Form #E-5

____

Board or State Association

____

Address City State Zip

Response to Grievance Committee Request for Information

To the **Grievance Committee** of the

____

Board or State Association

Filed ______________________________, 20__________

______________________________ ______________________________

______________________________ ______________________________

Complainant(s) Respondent(s)

in a matter of alleged violation of the Code of Ethics or other membership duty as set forth in the bylaws of this Board.

Respondent(s) replies and substantiates such reply by the following attached statement:

This is true and correct to the best knowledge and belief of the undersigned. I (we) declare that to the best of my (our) knowledge and belief, the statements contained in this Reply are true and correct.

Boards or Associations of REALTORS® where I hold or have held membership in the preceding three (3) years:

____

I understand that, if found in violation of the Code of Ethics or other membership duty, a respondent will be assessed an administrative processing fee of ___________*.

Respondent(s):

______________________________ ______________________________

Type/Print Name Signature

____

Address

______________________________ ______________________________

Phone Email

______________________________ ______________________________

Type/Print Name Signature

____

Address

______________________________ ______________________________

Phone Email

(Revised 11/16)

*Fee not to exceed $500 and may not be assessed unless the Board of Directors has established policy to assess this fee against respondents found in violation of the Code of Ethics or other membership duty.

Form #E-5.1

Grievance Committee Report Form

(Return to Association when completed)

Case #:____________________ ____________________________ ____________________________

Complainant(s) Respondent(s)

On _______________________, the ____

Date Name of Board

Grievance Committee met to review the above-referenced matter which is a(n) ❒ Request for Arbitration ❒ Ethics Complaint
As a result of that meeting, the Grievance Committee recommends the following action.

Arbitration Request

❒ The arbitration request is a matter for mandatory arbitration and shall be forwarded to the Professional Standards Committee for a hearing.

❒ The arbitration request is a matter for voluntary arbitration and shall be forwarded to the Professional Standards Committee for a hearing, provided that all parties agree.

❒ The arbitration request is not a matter for arbitration and the Grievance Committee dismisses the request. The complainant has the right to appeal the dismissal to the Board of Directors within 20 days from the date that staff transmits the dismissal notice.

Reason for dismissal: ❒ not timely filed ❒ not arbitrable ❒ board does not have jurisdiction

❒ other *(explain)* ____

Ethics Complaint

❒ The complaint, if taken as true on its face, constitutes potentially unethical conduct and will be forwarded to the Professional Standards Committee for a hearing. Articles originally charged:__________________________________.

❒ The complaint is amended by adding and/or deleting the following Articles and will be forwarded to the Professional Standards Committee for a hearing:

________________________________ ________________________________

Articles Added Articles Deleted

Rationale for Article(s) added: ____

____

Reason for dismissing Articles: ❒ not timely filed ❒ allegations do not demonstrate a possible violation of the Code

❒ other *(explain)*____

Note which reason is applicable to which Article(s) dismissed. If the complainant does not agree with deleting an Article(s), complainant may appeal the dismissal of the Article(s) to the Board of Directors within 20 days of transmittal of the dismissal notice.

If no appeal is filed, the complaint, as amended, shall be forwarded to the Professional Standards Committee for hearing. If an appeal is filed, then no hearing will be held until the appeal is heard.

Reason for dismissing complaint: ❒ not timely filed ❒ allegations do not demonstrate a possible violation of the Code

❒ association does not have jurisdiction over the respondent

❒ other *(explain)* ____

If the complainant does not agree with the dismissal of the complaint, the complainant may appeal the dismissal to the Board of Directors within 20 days from transmittal of dismissal notice.

________________________________ ________________________________

Grievance Committee Chairperson Date

(Revised 11/14)

Form #E-6

____

Board or State Association

____

Address City State Zip

Notice of Right to Challenge Tribunal Members*

Notice is given herewith to parties in the matter of ________________________________ vs. ________________________________, an ethics proceeding, that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or the Board of Directors. A list of such individuals is provided below. If you wish to challenge the qualifications of any of the individuals listed who may be appointed to sit on the Tribunal, please indicate by checking the appropriate blank, and return this form or a copy of same with a letter (or enclosed Form #E-7, if preferred) to the (Professional Standards Committee Chairperson) (Professional Standards Administrator) explaining your reason ("cause") for challenge. If your reason is deemed sufficient to support your challenge, the individual challenged will not be appointed to the Tribunal. Pursuant to Section 2, Qualification for Tribunal, challenges must be filed with the Board not later than ten (10) days after the date the list of names is transmitted.

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____________________________ ____________________________

Party's Name (Type/Print) Party's Signature Date

____________________________ ____________________________

Party's Name (Type/Print) Party's Signature Date

(Revised 11/14)

*Members of ethics Hearing Panels or the Board of Directors. Does not include members of a Grievance Committee. See Section 2, Qualifications for Tribunal, *Code of Ethics and Arbitration Manual*.

Form #E-7

____

Board or State Association

____

Address City State Zip

Challenge to Qualifications by Parties to Ethics Proceeding

I (we), as party to the matter in ______________________________ vs. ______________________________, hereby challenge the qualification of the following named individual(s) who may be appointed as a member(s) of the Tribunal* for the following reasons. (NOTE: Unsubstantiated challenges will be disregarded.)**

Panel Member Challenged: ______________________________

Reason: ____

____

____

Panel Member Challenged: ______________________________

Reason: ____

____

____

Panel Member Challenged: ______________________________

Reason: ____

____

____

Type/Print Name of Party: ______________________________

Signed: ____ Date: ______________

Type/Print Name of Party: ______________________________

Signed: ____ Date: ______________

Type/Print Name of Party: ______________________________

Signed: ____ Date: ______________

*Members of ethics Hearing Panels or the Board of Directors.

**Use additional pages as required to list additional challenges to the qualifications of individuals who have been or may be selected to serve as member(s) of a Tribunal in an ethics proceeding to which you are a party.

Form #E-8

____
Board or State Association

____
Address City State Zip

Official Notice of Hearing (Ethics)

In the case of ________________________________ vs. ________________________________
Complainant Respondent

Above parties are hereby notified:

(1) The Chairperson of the Hearing Panel has designated the ________________________________, 20 ________
Day Month Year

__________ A.M./P.M. at____,
Time Place of Hearing

as the time for hearing the above case, which is a hearing concerning alleged violation of Article(s) ____________________

______________________________ of the Code of Ethics or other membership duty as set forth in the bylaws of the Board in

____.
Article, Section

(2) You are hereby notified to appear at the time and place so designated.* Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to ethics hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.

(3) The members of the Hearing Panel appointed to hear the case are:

________________________________ ________________________________

________________________________ ________________________________

________________________________ ________________________________

(4) Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) Either party may be represented by counsel, and each party is requested to provide written notice of an intention to have counsel present fifteen (15) days before the hearing to the Board and the other party including counsel's name, address, and phone number. Failure to provide this notice will not invalidate a party's right to representation, but may result in a continuance of the hearing if the Hearing Panel determines that the rights of any other party require representation by counsel.

(6) Each party must provide a list of the names of the witnesses he intends to call at the hearing to the Board and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. This includes REALTOR® principals consistent with Section 13(d), *Code of Ethics and Arbitration Manual*. All parties appearing at a hearing may be called as a witness without advance notice.

(7) The parties shall not discuss the case with any member of the Hearing Panel or the Board of Directors prior to the hearing or after hearing and prior to announcement of the decision.

(8) The Board of Directors has adopted a policy to assess an administrative processing fee of ________** should a respondent be found in violation of the Code of Ethics or other membership duty.

Respectfully submitted,

____________________________ ____________________________, Professional Standards Administrator
Type/Print Signature

____
Board or State Association

Dated: ____________________________, 20__________

(Revised 11/15)

*Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing.

**Board of Directors must adopt a policy to assess this fee uniformly and consistently, prior to it being assessed. Fee may not exceed $500.

Form #E-9

Board or State Association

Address City State Zip

Outline of Procedure for Ethics Hearing

(To be Transmitted in Advance to Both Parties)

Remote testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to ethics hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings when all parties must participate virtually.

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

Recording the hearing: The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties.

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel.

Due process procedure: (Chairperson's Procedural Guide of an Ethics Hearing is available in the *Code of Ethics and Arbitration Manual*.)

The hearing procedures will be:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The complaint will be read into the record.

(3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.

(4) Opening statements, first by complainant, then by respondent, briefly explaining party's basic position.

(5) The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses. All parties appearing at the hearing may be called as witnesses without advance notice.

(6) The parties and their counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.

(7) The panel members may ask questions at any time during the proceedings.

(8) The Chairperson may exclude any question ruled to be irrelevant or argumentative.

(9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.

(10) Adjournment of hearing.

(11) The Hearing Panel will go into executive session to decide the case.

Findings in ethics hearing: The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedures of **Part Four,** Sections 22 and 23 of the *Code of Ethics and Arbitration Manual*.

Use of counsel: A party may be represented in any ethics hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised that all matters discussed are strictly confidential.

(Revised 11/21)

Form #E-9a

Board or State Association

Address City State Zip

Outline of Procedure for Ethics Hearing Involving a Complaint and Counter-Complaint

(To be Transmitted in Advance to Both Parties)

Remote testimony: Hearings may be held in person, remotely or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to ethics hearings may be permitted to participate remotely in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings when all parties must participate virtually.

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chair. If the request is approved by the Chair, all parties shall be advised of the rescheduled hearing date.

Recording of the hearing: The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recordings be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties.

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel.

Due process procedure: (Chairperson's Procedural Guide for Ethics Hearings Involving a Complaint and a Counter-Complaint is available on-line at nar.realtor.)

The hearing will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The complaint and counter-complaint will be read into the record.

(3) The testimony of all parties and witness(es) will be sworn or affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at a hearing may be called as a witness without advance notice.

(4) Complainant/counter-respondent will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that he feels have been violated, explaining how the respondent/counter-complainant violated each Article and refuting the contention that he violated any provisions of the Code of Ethics.

(5) Respondent/counter-complainant will present a brief opening statement uninterrupted, identifying the specific Article(s) of the Code of Ethics that she feels have been violated, explaining how the complainant/counter-respondent violated each Article and refuting the contention that she violated any provision of the Code of Ethics.

(6) Complainant/counter-respondent presents his case and defenses by offering testimony and evidence from himself and/or his witness(es) to support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and refuting the allegations made by the counter-complainant.

   (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and rebutting the complainant's contention that she violated the Code of Ethics.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support the allegations of violations of the Code of Ethics by the respondent/counter-complainant and/or refute the allegations made by the respondent/counter-complainant.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support the allegations of violations of the Code of Ethics by the complainant/counter-respondent and/or refute the allegations made by the complainant/counter-respondent.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/counter- complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/ counter-respondent and/or of the complainant/counter-respondent's witness(es).

(11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).

(12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/ counter-complainant (respectively) may present uninterrupted closing statements.

(13) The Chair will then adjourn the hearing.

(14) The Hearing Panel will go into executive session to decide the case.

Findings in ethics hearing: The findings and recommendation for discipline, if any, shall be reduced to writing by the Hearing Panel and submitted to the Board of Directors in accordance with the procedures of **Part Four,** Section 23 of the *Code of Ethics and Arbitration Manual*.

Testimony: Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which he or she deems irrelevant or argumentative.

Use of counsel: A party may be represented in any hearing by legal counsel or by a REALTOR® of their choosing (or both). However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised all matters discussed are strictly confidential.

(Adopted 11/98, Revised 11/21)

Form #E-10

____

Board or State Association

____

Address City State Zip

Certificate of Qualification and Affirmation of Confidentiality

This case is confidential.

I, the undersigned, member of a Hearing Panel of the Professional Standards Committee (or Board of Directors or tribunal thereof) of the

____

Board or State Association

do hereby acknowledge that any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with this case may violate Article 14 of the Code of Ethics and/or result in my removal from the Professional Standards Committee or Board of Directors, whichever is applicable.

Additionally, I hereby certify that I am not disqualified by any reason stated herein from hearing the case:

______________________________ vs. ______________________________.

Cited case is a hearing addressing an alleged violation of the Code of Ethics or other membership duty as set forth in the bylaws of the Board.

Reasons for disqualification: Any member of the Hearing Panel (or Board of Directors or tribunal thereof) shall be disqualified from hearing any case if the member:

(a) is related by blood or marriage to the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(b) is an employer, partner, employee, or in any way is associated in business with the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(c) is a party to the hearing, or a party or witness in any pending case involving any party to this hearing

(d) knows of any reason acceptable to the Hearing Panel (or Board of Directors or tribunal thereof) that may prevent the member from rendering an impartial judgment

______________________________ ______________________________,

Type/Print Name Signature

Dated: ____________________, 20______

NOTE: No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated.

(Revised 11/15)

Form #E-11

Board or State Association

Address City State Zip

Decision of Ethics Hearing Panel of the Professional Standards Committee

Filed ______________________________, 20__________

Complainant(s) Respondent(s)

Findings of fact: The hearing panel finds the following facts in support of its conclusion regarding the alleged violations of the Code of Ethics:

Conclusions of the hearing panel: We, the members of the Hearing Panel in the above-stated case, find the Respondent(s)

(in violation) (not in violation) of Article(s) _________________ of the Code of Ethics.

Prior violations, if any:

Recommendation for disciplinary action, if any, if violation found, including time frame in which discipline must be complied with: We recommend to the Board of Directors the following action:

Rationale for discipline, if any, if violation found: (e.g., previous violations):

Consequences for noncompliance with discipline:

The decision, findings of fact, and recommendation(s) preceding were rendered by an ethics Hearing Panel comprising the following members whose signatures are affixed below. The hearing took place on ______________________________, 20_______.

______________________________, Chairperson	______________________________, Member
Type/Print Name	Type/Print Name
______________________________	______________________________
Signature	Signature
______________________________, Member	______________________________, Member
Type/Print Name	Type/Print Name
______________________________	______________________________
Signature	Signature
______________________________, Member	
Type/Print Name	
______________________________	
Signature	

Notice: This decision is not final and is subject to certain rights of both the complainant and the respondent.

Complainant's rights: Within twenty (20) days of transmittal of this notification, the complainant may file an appeal with the President for a hearing before the Directors based only upon an allegation of procedural deficiencies or other lack of procedural due process that may have deprived the complainant of a fair hearing. A transcript or summary of the hearing shall be presented to the Directors by the Chairperson of the Hearing Panel, and the parties and their counsel may be heard to correct the summary or the transcript. No new evidence will be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal will be decided on the transcript or summary. Any appeal must be accompanied with a deposit of $__________.*

Respondent's rights: Within twenty (20) days of transmittal of this notification the respondent may file an appeal with the President for a hearing before the Directors challenging the decision and/or recommendation for discipline. The respondent's bases for appeal are limited to (1) a misapplication or misinterpretation of an Article(s) of the Code of Ethics, (2) procedural deficiency or any lack of procedural due process, and (3) the discipline recommended by the Hearing Panel. A transcript or summary of the hearing shall be presented to the Directors by the Chairperson of the Hearing Panel, and the parties and their counsel may be heard to correct the summary or transcript. No new evidence will be received (except such new evidence as may bear upon a claim of deprivation of due process), and the appeal will be decided on the transcript or summary. Any appeal must be accompanied with a deposit of $__________.*

Final action by directors: Both the complainant and respondent will be notified upon final action of the Directors.

NOTE TO HEARING PANEL: Respondents may only be found in violation of Articles they have been formally charged with having violated. If the respondent is found in violation, the Hearing Panel will consider all records of previous violations and sanctions imposed, whether by the current or by any other Association, when determining discipline and the rationale for the current action can be provided to the parties and the Directors as part of the decision. The Hearing Panel's consideration will include whether prior disciplinary matters involve discipline that was held in abeyance and that will be triggered by a subsequent violation (including the matter currently under consideration by the Hearing Panel).

Hearing Panels that find a matter not timely filed should transmit their decision via correspondence (not Form #E-11, Decision of Ethics Hearing Panel of the Professional Standards Committee). Appellants appealing a Hearing Panel's dismissal should use Form #E-22, Appeal of Grievance Committee (or Hearing Panel) Dismissal of Ethics Complaint.

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*Fee not to exceed $500.

(Revised 11/16)

Form #E-11a

Sample "Findings of Fact and Conclusions"

ABC Board of REALTORS®, Inc.
Board or State Association

123 Elm Street	Anywhere	Any State	00000
Address	City	State	Zip

Decision of Ethics Hearing Panel of the Professional Standards Committee

Filed January 1, 2023

Buyer C	REALTOR® A
Complainant(s)	Respondent(s)

Findings of fact: The hearing panel finds the following facts in support of its conclusion regarding the alleged violation of the Code of Ethics.

REALTOR® A obtained a check for earnest money deposit from Buyer C along with a signed offer to purchase. REALTOR® A deposited this check in his personal savings account and presented the offer to Seller B. Seller B rejected the offer, and Buyer C was unwilling to offer a higher price and requested REALTOR® A return his deposit. REALTOR® A was unable to return the deposit as requested because his wife, unbeknownst to him, had made a substantial withdrawal from the savings account.

Conclusions of the hearing panel: We, the members of the Hearing Panel in the above-stated case, find REALTOR® A in violation of Article 8 of the Code of Ethics for having failed to put Buyer C's money into an escrow account separate from his personal funds.

Prior violations, if any: Not applicable.

Recommendation for disciplinary action, if any, if violation found: We recommend to the Board of Directors the following action: That REALTOR® A be fined $10,000 and that the directors refer this matter to the regulatory body as a violation of the public trust.

Rationale for discipline, if any, if violation found (e.g., previous violations)**:** Although this is the respondent's first violation of the Code, this violation is considered very serious.

Consequences for noncompliance with discipline: If the fine is not paid within ten (10) days from transmittal of the directors' final decision, REALTOR® A will be expelled from board membership until such time as he pays the fine.

The decision, findings of fact, and recommendation(s) preceding were rendered by an ethics Hearing Panel comprised of the following members whose signatures are affixed below. The hearing took place on January 1, 2023.

____________________, Chairperson
Type/Print

____
Signature

____________________, Member
Type/Print

____
Signature

____________________, Member
Type/Print

____
Signature

____________________, Member
Type/Print

____
Signature

____________________, Member
Type/Print

____
Signature

(Revised 11/15)

Form #E-12

____
Board or State Association

____
Address City State Zip

Action of the Board of Directors (Ethics Hearing)

For use by the Board of Directors if no appeal has been filed to the Hearing Panel's decision:

The decision of the Hearing Panel in the matter of ______________________ vs. ______________________
Complainant Respondent

dated ______________, 20____ (copy attached), came before the Board of Directors on ____________, 20____, and was considered by the Directors.

The decision of the Hearing Panel and its recommendation for disciplinary action, if any, in the above-referenced case is hereby (check one):

❐ adopted verbatim

❐ adopted, but the recommendation for discipline is modified as follows:

____

____

____

____

____

❐ remanded to the Hearing Panel for further consideration of the discipline recommended

❐ remanded to the Professional Standards Committee for a new hearing by a different Hearing Panel based on perceived procedural deficiency(ies)

❐ reversed and the complaint is dismissed because the findings of fact do not support a possible violation of the Code of Ethics

Reason(s) for rejection/Directors' concerns with Hearing Panel's decision and/or recommendation(s):

____

____

____

____

____

The action of the Board of Directors was adopted on ______________________________, 20_____, by resolution.

For the Board of Directors:

__________________________ __________________________, Professional Standards Administrator
Type/Print Signature

For use by the Board of Directors if appeal is held:

The decision of the Hearing Panel in the matter of ______________________________ vs. ______________________________
Complainant Respondent

dated ________________, 20_____ (copy of the Hearing Panel's decision attached), was appealed by ______________________
Appellant

and was considered by the Board of Directors on ________________, 20_____.

A copy of ______________________'s appeal alleging ____ is attached.
Appellant Indicate Basis(es) for Appeal

The Hearing Panel's decision and recommendation for disciplinary action, if any, in the above-referenced case is hereby (check one):

❒ adopted verbatim

❒ adopted, but the recommendation for discipline is modified as follows:

____

____

____

____

____

❒ remanded to the Hearing Panel for further consideration of the discipline recommended

❒ remanded to the Professional Standards Committee for a new hearing by a different Hearing Panel based on perceived procedural deficiency(ies)

❒ reversed and the complaint is dismissed

Reason(s) for modification/remand/rejection of the Hearing Panel's decision:

____

____

____

____

____

Disposition of Appeal Deposit (if any):

❒ to be returned to Appellant

❒ to be retained by the Board

The action of the Board of Directors was adopted on ____, 20______, by resolution.

For the Board of Directors:

______________________________ ______________________________, Professional Standards Administrator
Type/Print Signature

(Revised 5/07)

Form #E-13

____

Board or State Association

____

Address City State Zip

Request for Appeal (Ethics)

To the President of the ____

Board or State Association

In the case of: ________________________ vs. ________________________.

Complainant Respondent

I (we), ____________________________, do hereby request an appeal before the Board of Directors of the ____.

Board or State Association

My (our) appeal is based on the following:

Check one or more and set forth in reasonable detail (narrative) the facts and evidence which support the bases cited. Attach narrative to Appeal Form. Complainant may only appeal on procedural deficiency or lack of due process.

- ☐ Misapplication or misinterpretation of an Article(s) of the Code of Ethics
- ☐ Procedural deficiency or any lack of procedural due process
- ☐ The discipline recommended by the Hearing Panel

The Request for Appeal Form *must* be accompanied by a deposit in the amount of $_____________________* made payable to the

____.

Board or State Association

NOTE #1: If the decision of the Hearing Panel is ratified, the deposit will be retained by the Association. If the appeal is upheld, the deposit will be returned to the appellant. If the decision of the Hearing Panel is modified, disposition of the deposit will be determined by the Directors considering the appeal.

NOTE #2: Only those facts and issues raised in this written request will be considered by the Board of Directors at the appeal hearing.

Dated: ____________________________

Name (Type/Print) ____________________ Name (Type/Print) ____________________

Signature ____________________ Signature ____________________

Address ____________________ Address ____________________

____________________________ ____________________________

Phone ____________________ Phone ____________________

(Revised 5/05)

*Not to exceed $500.

Form #E-14

____
Board or State Association

____
Address | City | State | Zip

Official Notice of Appeal Hearing (Ethics)

In the case of: ______________________ vs. ______________________
Complainant | Respondent

Above parties are hereby notified:

(1) ______________________ has appealed the decision of the Hearing Panel in the above-cited case, based on
Appellant

____.
Indicate Basis(es) for Appeal

A copy of the Request for Appeal, together with its supporting documentation, is attached.

(2) The Board of Directors will meet on ______________________, 20______, _________ A.M. or _________ P.M.
Day Month

at ______________________ to hear the appeal.
Place of Hearing

(3) The members of the Board of Directors who will hear the appeal are:

______________________ ______________________

______________________ ______________________

______________________ ______________________

(If more space is needed, attach list of other Directors who will hear the appeal.)

(4) Either party may be represented by counsel, and each party is required to give the Board and the other party written notice of an intention to have counsel present fifteen (15) days before the hearing. Failure to provide this notice will not invalidate a party's right to representation, but may result in a continuance of the hearing if the Appeal Tribunal determines that the rights of any other party require representation by counsel.

(5) Either party may file with the Professional Standards Administrator, no later than ten (10) days after the date challenge forms were transmitted, a written request for disqualification from the appeal hearing of any member of the Board of Directors for the following reasons:

(a) is related by blood or marriage to the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(b) is an employer, partner, or employee or in any way associated in business with the complainant, respondent, or a REALTOR® acting as counsel for either the complainant or respondent

(c) is a party to the hearing

(d) knows of any reason that may prevent the member from rendering an impartial judgment

(e) has served as a member of the Grievance Committee initially reviewing the ethics complaint or as a member of the professional standards Hearing Panel which reached the decision currently on appeal

(6) The parties shall not discuss the case with any member of the Hearing Panel or Board of Directors prior to the appeal hearing or after the appeal hearing and prior to announcement of the decision of the Directors.

Respectfully submitted,

______________________________ ______________________________, Professional Standards Administrator

Type/Print Signature

____

Board or State Association

Dated: ______________________________, 20______

(Revised 05/15)

Form #E-15

Checklist of Professional Standards Concerns for Elected Officers and Directors and for Professional Standards Administrators of Boards of REALTORS®

❐ (1) **Concern** for the obligation of the Board to enforce the Code of Ethics (see Article IV, Bylaws, NATIONAL ASSOCIATION OF REALTORS®).

❐ (2) **Concern** for the enhanced public image and credibility of REALTORS®, REALTOR ASSOCIATE®s, and the Board.

❐ (3) **Concern** for liability of the Board related to Code enforcement — minimal if correct; serious if done inaccurately or inappropriately.

❐ (4) **Concern** for sound procedures, due process, and fairness — every member entitled.

❐ (5) **Concern** that the Board's professional standards procedures are substantively in compliance with National Association and State Association procedures — ensures coverage of Errors and Omissions Insurance.

(The National Association recommends adoption of the *Code of Ethics and Arbitration Manual,* as adapted to comply with state law.)

❐ (6) **Concern** for wise appointments to the Grievance Committee and Professional Standards Committee — mature, experienced, and knowledgeable individuals of judicious temperament.

(a) **President-Elect** — start to consider potential appointees early.

(b) Select best possible **Chairperson.**

(c) Select competent **Committee Members.**

❐ (7) **Concern** for Leadership Involvement — President's personal commitment to Code awareness training programs and proper Code enforcement.

❐ (8) **Concern** for accountability of Grievance Committee and Professional Standards Committee Members.

❐ (9) **Concern** for distinguishing between "ethics" and "arbitration" cases.

❐ (10) **Concern** that ethics hearings serve their purposes — education of members and vindication of the Code.

❐ (11) **Concern** that arbitration be limited to "properly arbitrable matters."

❐ (12) **Concern** that the Grievance Committee does not exceed its function of making preliminary reviews to determine proper disposition of ethics complaints and requests for arbitration.

❐ (13) **Concern** that Board Officers and staff not be given or assume responsibility beyond their proper role in professional standards matters.

❐ (14) **Concern** that ethics and arbitration matters be heard separately — arbitration first, then ethics.

❐ (15) **Concern** that the Board has access to legal counsel and that counsel's involvement in professional standards proceedings or in reviewing professional standards decisions is routine.

❐ (16) **Concern** that the public is provided adequate information and assistance to fully understand what the Board can do and does do, and what the Board cannot do.

❐ (17) **Concern** that Board hearings are conducted in strict accordance with the professional standards procedures of the Board's bylaws.

❒ (18) **Concern** that professional standards procedures and proceedings are unbiased and conducted without fear or favor— **ensure impartiality.**

❒ (19) **Concern** that the parties are aware that an appeal remedy is always available in ethics matters.

❒ (20) **Concern** that the Board of Directors understands its role in professional standards matters.

(a) Ethics — appeal.

(b) Arbitration — no review or appeal, except in respect to alleged procedural irregularities resulting in deprivation of "due process."

❒ (21) **Concern** for confidentiality of professional standards proceedings.

❒ (22) **Concern** for proper publication of decisions as specified in the *Code of Ethics and Arbitration Manual* — limited dissemination of findings.

❒ (23) **Concern** for matters that are currently being litigated.

(a) On the advice of Board legal counsel, an ethics hearing may proceed **or** may be held in abeyance if criminal or civil litigation or proceeding before state real estate licensing authority or other state or federal regulatory or administrative agency is pending on the same matter.

(b) **Never** hold an arbitration hearing when the arbitrable matter is the subject of litigation.

❒ (24) **Concern** for common sense — encourage resolution of disputes by mediation (reduces arbitration case load).

❒ (25) **Concern** for training — the National Association recommends that an Education Subcommittee of the Board's Professional Standards Committee be appointed and charged with providing a continuing education program for Board Members in Code of Ethics awareness, understanding, and procedures.

❒ (26) **Concern** for Code enforcement training — State and Board.

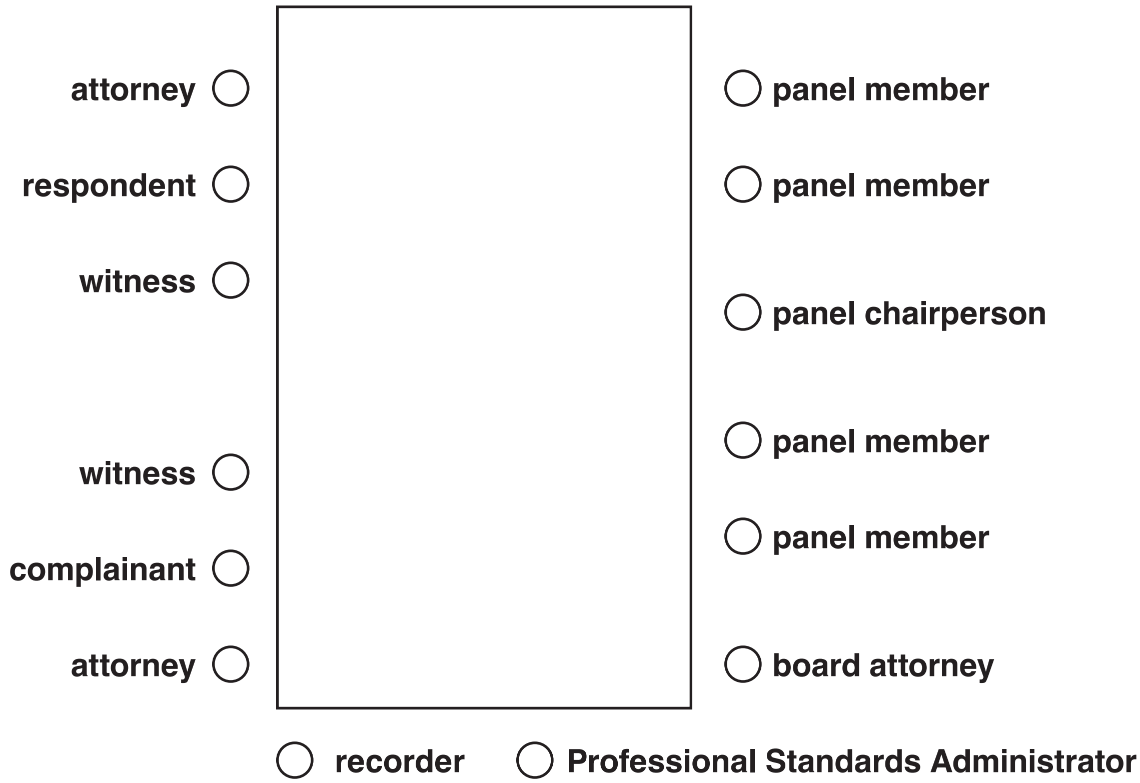
❒ (27) **Concern** for dealing promptly and fairly with complaints brought by the public.

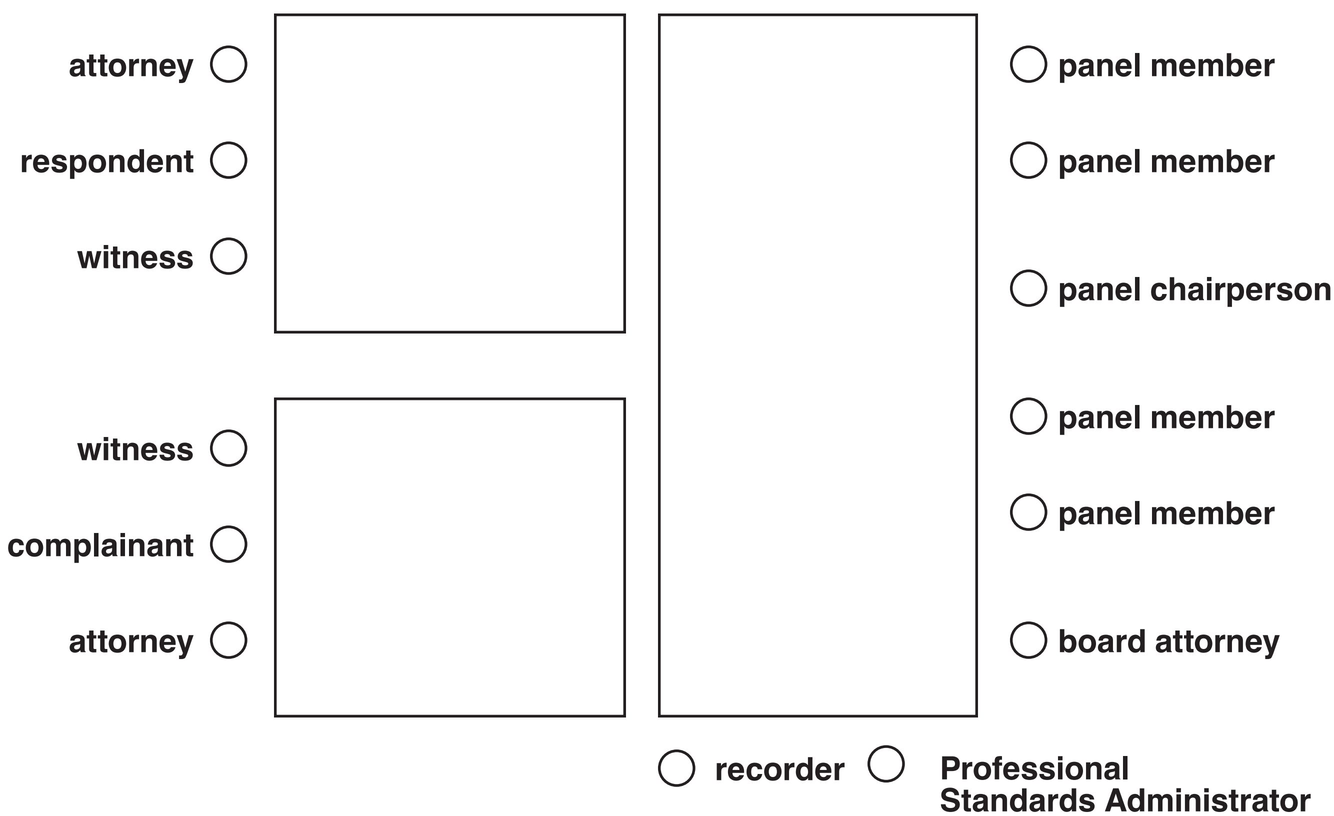
❒ (28) **Concern** for liability of REALTORS® in dealing with the public.

❒ (29) **Concern** for changes in professional standards policies and procedures, in revisions of the Code, new or revised interpretations of the Code, and revised editions of training aids and National Association publications related to the Code and its enforcement.

Form #E-16

Seating Arrangements for Hearings





Form #E-17

Ethics Activity Report

Boards are encouraged to publish periodic Code of Ethics activity reports. This model is a suggestion, and Boards may choose to provide other relevant information.*

Number of ethics complaints filed from ______________________ to ______________________.
Date Date

	Article(s) of the Code alleged to have been violated	Referred by Grievance Committee for hearing		Article(s) found by Hearing Panel to have been violated	Appeal of Hearing Panel decision		Board of Directors final action	Discipline imposed (if any)
		Yes	No		Yes	No		
Complaint #1								
Complaint #2								
Complaint #3								
Complaint #4								
Complaint #5								
Complaint #6								
Complaint #7								
Complaint #8								
Complaint #9								
Complaint #10								

*No report shall include the names of individuals or firms.

(Revised 11/00)

Form #E-18

Outline of Content of Petition for Declaratory Relief

____ Board of REALTORS® (hereafter "plaintiff")
Name

complains of defendant ________________________________ (hereafter "defendant") and alleges:
Name

(1) Plaintiff is a corporation duly organized and existing under the laws of the State of ____________________
State

and is a Member Board of ____________________ Association and the NATIONAL ASSOCIATION OF REALTORS®.
State

Note to Preparer: Choose either (a) or (b) (or [i] [ii]) in each section throughout this form as appropriate.

(2) Plaintiff's bylaws include, and at all times herein mentioned have included provisions
(a) governing qualifications, eligibility, and application for membership and admission to membership therein.
(b) relating to discipline of members for violation of their obligations as members.
A true and exact copy of the bylaws is attached as Exhibit A.

(3) (a) On about ______________ defendant applied for membership in plaintiff. After duly considering defendant's
Date
application in accordance with its bylaws, plaintiff has concluded that defendant is not eligible or qualified for membership and that defendant's application for membership should be rejected.
(b) Heretofore a complaint was filed with plaintiff against defendant charging violation of membership obligations. Disciplinary proceedings were duly taken and had pursuant to the bylaws, and in consequence plaintiff has concluded that defendant

should be ________________ from membership and will ____________ unless the Court holds otherwise.
Suspended or expelled as the case may be — Suspend or expel

(4) An actual controversy exists between plaintiff and defendant in that defendant claims
(a) to be qualified and eligible for, and entitled to, membership in plaintiff and that plaintiff's conclusion to the contrary is improper and unlawful, and defendant threatens
(b) that defendant should not be suspended or expelled and that plaintiff's decision to suspend or expel and the suspension or expulsion are and would be improper and unlawful and defendant has threatened to sue plaintiff, its officers, directors, members, or some of them for damages in the event plaintiff denies membership to defendant, praying that this court enjoin plaintiff from
____.
Denying defendant's application for membership/Suspending or expelling defendant's membership

Plaintiff disputes those contentions and contends that its conclusion
(a) not to admit defendant to membership is entirely proper and lawful and that rejection of defendant's application would be entirely proper and lawful.
(b) that defendant should be suspended or expelled from membership and suspension or expulsion is and would be entirely proper and lawful.

(5) Plaintiff is
(a) holding defendant's application for membership
(b) not putting into effect its decision to suspend or expel defendant from membership
until declaration of the rights of the parties in the premises is made in this case.

(6) WHEREFORE, plaintiff ________________________________ Board of REALTORS® prays
Name
(a) judgment declaring and determining the rights and duties of the parties and in particular adjudicating that plaintiff's decision to
(i) reject the defendant's application for membership
(ii) suspend or expel defendant
is lawful and proper that such ____________________________ will not give rise to any cause of
Rejection/Suspension or expulsion
action in favor of defendant against plaintiff, its officers, directors, or members or any of them
(b) for its costs of suit herein incurred, and
(c) for such other and further relief as may be proper.

Note: (a) Relates to complaint based on intent to reject membership application.
(b) Relates to complaint based on intent to suspend or expel a member.

Petitions for declaratory relief must take the form established by local court procedure. **No petitions should be prepared except by the Board's legal counsel.**

Form #E-19

Sample Format of Agreement Between ______ and ______ Boards of REALTORS®
to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures

(1) **Authority**

The authority for the establishment and utilization of multi-Board (or regional) professional standards enforcement procedures shall be established by this Agreement approved by the Boards of Directors of ______________________________ and ______________________________ Boards of REALTORS® and confirmed by approval of the general membership at a duly called meeting with notice as required by the Boards' bylaws.

(2) **Geographic Area**

The geographic area served by this Agreement shall be the area of the combined territorial jurisdiction assigned by the NATIONAL ASSOCIATION OF REALTORS® to the Boards which are signatories to this Agreement.

(3) **Purpose**

The purpose of this Agreement is to create multi-Board (or regional) professional standards enforcement procedures providing for the appointment of Mediation Officers and the establishment of a joint Grievance Committee, Professional Standards Committee, and an Appeal Panel comprising members from each signatory Board for enforcement of the Code of Ethics, including the mediation of disputes and the conduct of arbitration hearings, involving members of the signatory Boards to ensure impartial and unbiased Hearing Panels for the conduct of hearings on a basis designed to provide this service and meet the responsibilities of the signatory Boards on an efficient and effective basis to better serve their members.

(4) **Composition of Tribunals**

(a) This Agreement authorizes the establishment of a multi-Board (or regional) Grievance Committee. The Grievance Committee shall be composed of at least one (1) member in good standing of each signatory Board.

Members of the Grievance Committee from each signatory Board shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be unable to serve for any reason. The Grievance Committee shall select its own Chairperson (or, alternatively, the Grievance Committee Chairperson shall be selected from members of the Grievance Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There must be at least three (3) individuals serving on the multi-Board Grievance Committee, and it is desirable that the number be greater to provide an adequate number of members to handle the anticipated case load without undue stress.

(b) This Agreement also authorizes the establishment of a multi-Board (or regional) Professional Standards Committee. The Professional Standards Committee shall be composed of at least two (2) members in good standing from each signatory Board.

The members of the Professional Standards Committee shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be disqualified for any valid reason from hearing a particular matter. The Professional Standards Committee shall select its own Chairperson (or, alternatively, the Chairperson shall be selected from members of the Professional Standards Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There shall be at least nine (9) members of the Professional Standards Committee, and more, if feasible, to handle the anticipated case load without undue stress.

(c) Members of the Grievance Committee and the Professional Standards Committee shall be appointed initially in terms of one (1), two (2), and three (3) years (one-third for each term). New appointments shall be made for three (3) year terms as each term expires. Members of the committees shall be eligible for reappointment.

(d) This Agreement also authorizes the appointment of a panel of Mediation Officers to include at least one (1) such Mediation Officer from each signatory Board. Although utilization of the service of mediation shall be voluntary, unless REALTORS® (principals) are required by their Board which is a signatory to this agreement to mediate otherwise arbitrable disputes pursuant to Article 17,* and although the process is not defined as a tribunal, all parties to any requested arbitration shall be provided the opportunity to mediate a dispute arising out of a real estate transaction and their relationship as REALTORS® prior to the arbitration of the dispute. *(Revised 11/11)*

(5) **Operation**

(a) Professional standards hearings and the organization and procedures incident thereto shall be governed by the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS® as amended from time to time, and as adapted to conform to the provisions of applicable state law, and which is hereby agreed shall be considered as adopted and incorporated into the bylaws of each Board signatory to this Agreement.

NOTE: Any matters of local Board option should be considered and agreed on in advance as necessary and the signatory Boards should also clarify which Board will be responsible for administering the process. The following is an example of such clarification:

The respondent's local Board, or the Board through which the respondent gains access to and use of the MLS, will be responsible for administering the procedures and all optional provisions (see pages i and ii of the Code of Ethics and Arbitration Manual*) of that Board will control.*

(b) Appeals of the Grievance Committee's dismissal of an ethics complaint or arbitration request (or challenges to the classification of arbitration requests) shall be heard by those members of the Committee who did not serve on the original tribunal. If panels of the Grievance Committee are not used, any appeal of the Grievance Committee's dismissal (or challenge to an arbitration request classification) shall be heard by a tribunal of five (5) members selected from the Boards of Directors of the signatory Boards to be appointed by the Boards' Presidents. *(Adopted 11/96)*

Appeal to an ethics determination rendered by the multi-Board (or regional) Professional Standards Committee shall be heard by those members of the Committee who did not constitute the original Hearing Panel. (For this reason, there should be an adequate number of members appointed to the Committee to provide an Appeal Panel of at least five [5] members.)

(c) Appeal is not provided from the decision of an arbitration panel established under this Agreement, except with respect to a claim by a party alleging deprivation of due process. Such a claim shall be heard by an Appeal Panel as described in the second paragraph of (b) above.

(d) In matters of alleged unethical conduct, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee that has not been appealed, or as finally determined if appealed, will be provided to the respondent's Board of original jurisdiction for ratification or implementation, as appropriate.

(e) In matters involving arbitration, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee will be provided to each respective party's Board of original jurisdiction for informational purposes. In the event a party to an arbitration refuses to pay an award in arbitration, the Board in which the award recipient holds membership shall advise the award recipient to seek judicial enforcement as set forth in Section 56, **Part Ten,** and in Appendix III, **Part Ten,** of the *Code of Ethics and Arbitration Manual*.

(f) In the event a complainant alleges that the respondent has improperly refused to submit a dispute to arbitration (or to mediation if the respondent's signatory Board requires REALTORS® [principals] who are parties to a dispute to mediate otherwise arbitrable matters pursuant to Article 17), the allegation shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board's Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original Arbitration Hearing Panel, or a tribunal of five [5] members selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). The procedure for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact to decide will be whether the party has refused to submit an arbitrable matter to arbitration (or mediation if required) in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the (specify body — name of tribunal) may direct implementation of appropriate sanction, including, but not limited to, suspension or expulsion of the member from the local Board of REALTORS® and/or its MLS. The decision of the (specify body — name of tribunal) shall be final and binding and is not subject to further review by the State Association or any signatory Board. *(Revised 11/15)*

* Requiring REALTORS® (principals) to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in the Board's governing documents. Enabling bylaw provisions can be found at www.nar.realtor (see Model Bylaws).

(g) In the event a party fails to, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual,* that failure shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original arbitration Hearing Panel, or a tribunal of five [5] members selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). This tribunal, consistent with Section 53, may, at its discretion impose discipline, including but not limited to termination of Board membership and/or MLS access/use, or may give the party an additional period to make the required deposit. The tribunal may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the tribunal. The decision of the tribunal shall be final and binding and is not subject to further review by the State Association or any signatory Board. *(Adopted 11/15)*

(6) **Reservation of Rights**

(a) It is understood and agreed by the Boards signatory to this Agreement that each Board reserves to itself all authority, rights, and privileges as have been assigned to it by its Charter and agreement with the NATIONAL ASSOCIATION OF REALTORS®, except as voluntarily modified by this Agreement.

(b) It is further understood and agreed that any Board signatory to this Agreement may withdraw from the Agreement at any time provided the withdrawing Board shall provide notice to the other signatory Boards ninety (90) days in advance of the date of withdrawal.

IN WITNESS THEREOF, the parties have hereto set their hands and seals on this _____ day of __________________,20______.

The effective date of this Agreement shall be ____, 20______.

Attested by

Type/Print President's Name	President's Signature
Board of REALTORS®	Date
Type/Print Association Executive's Name	Association Executive's Signature
Board of REALTORS®	Date

Type/Print President's Name	President's Signature
Board of REALTORS®	Date
Type/Print Association Executive's Name	Association Executive's Signature
Board of REALTORS®	Date

Type/Print President's Name	President's Signature
Board of REALTORS®	Date
Type/Print Association Executive's Name	Association Executive's Signature
Board of REALTORS®	Date

(Revised 11/15)

Form #E-20

____

Board or State Association

____

Address City State Zip

Notice to Respondent (Ethics) and Optional Waiver of Right to Hearing

In the case of ____________________ vs. ____________________

Complainant Respondent

To ______________________________________, Respondent:

Attached is a copy of a complaint which names you as Respondent, as filed with this Board and referred to the Grievance Committee

for review as a matter of an alleged violation of Article(s) ____________________ of the Code of Ethics or other conduct subject to disciplinary action.

You have a right to a hearing on this matter as provided in the *Code of Ethics and Arbitration Manual,* if you desire.

You may, if certain conditions are met, waive your right to a hearing. If you wish to waive your right to a hearing, please complete and sign the reverse side of this form. If you do not acknowledge the conduct alleged in the complaint and do not waive the right to a hearing within ten (10) days of transmittal of the complaint, you will have the opportunity to reply to the complaint and a hearing will be scheduled in accordance with the *Code of Ethics and Arbitration Manual*.

Respectfully submitted,

____________________ ____________________, Professional Standards Administrator

Type/Print Signature

____

Board or State Association

Dated: ____________________, 20________

(Revised 11/14)

Waiver of Right to a Hearing

If you wish to waive your right to a hearing, you must affirm as follows:

yes _________ (1) I have not been found in violation of the Code of Ethics by any Board or Association of REALTORS® in the preceding three (3) years.

Boards or Associations of REALTORS® where I hold or have held membership in the preceding three (3) years:

____

yes _________ (2) I acknowledge the conduct alleged in the complaint.

yes _________ (3) I agree to accept discipline which may include only one or more of the following: a letter of warning or reprimand, mandatory attendance at a relevant educational program, suspension for thirty (30) days, or a fine not in excess of $15,000, should a violation of the Code of Ethics ultimately be determined. I acknowledge that I may also be placed on probation.

yes _________ (4) I waive the right to a hearing.

____, ___________________________, 20_______.

Signature of Respondent Date

If You Request A Waiver of a Hearing

Your response to question 1 will be verified by the Grievance Committee Chairperson. If no violation has been found in the last three (3) years, and you answer the above questions in the affirmative, the complaint will be referred to a professional standards Hearing Panel. The panel will meet in executive session; neither the complainant nor the respondent will be present. The panel will determine whether the allegations, as acknowledged by the respondent, support a violation of one or more Articles of the Code of Ethics. The panel will prepare a written decision including findings of fact, conclusions, and a recommendation for discipline if a violation is found. Discipline may include only one or more of the following: a letter of warning or reprimand, mandatory attendance at a relevant educational program, suspension for thirty (30) days, or a fine not in excess of $15,000.*

The decision of the panel will be filed with the Professional Standards Administrator of the Board and disseminated as provided in the *Code of Ethics and Arbitration Manual*. Any appeal of the decision will be in accordance with the *Code of Ethics and Arbitration Manual*.

---

* In addition to imposing discipline, the Hearing Panel can also recommend to the Board of Directors that the disciplined member be put on probation. Probation is not a form of discipline. When a member is put on probation the discipline recommended by the Hearing Panel is held in abeyance for a stipulated period of time not longer than one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent findings of a violation during the probationary period, both the probationary status and the suspended discipline are considered fulfilled, and the member's record will reflect the fulfillment. The fact that one or more forms of discipline will be held in abeyance during the probationary period does not bar imposition of other forms of discipline which will not be held in abeyance.

(Revised 11/16)

Form #E-21

____
Board or State Association

____
Address City State Zip

Sample Letter of Reprimand/ Letter of Warning

RE: Letter of Reprimand (or Letter of Warning), Case ____________

Dear __________________:

The Board of Directors met on ________________________ (Date) to consider the above-referenced case. It was the decision of the Board of Directors to confirm the finding of a violation of Article(s) ______________________________ (Article(s)) of the Code of Ethics and the discipline recommended by the Hearing Panel.

Pursuant to the discipline imposed, you are to remit a $250 fine to be paid by ____________________________________ (Date) and attend ____ (Specific Name of Education Course) by ______________________________________ (Date), providing the Board with proof of completion of the course. Failure to pay the fine or attend the course as stipulated will result in

____.
Insert whatever additional discipline will automatically be imposed as recommended by the Hearing Panel and approved by the Board of Directors

This letter is to be construed as an Official Letter of Reprimand advising of a lack of professional conduct as determined by a due process hearing of the Professional Standards Committee and affirmed by the Board of Directors (or this letter is to be construed as an Official Letter of Warning advising of a lack of professional conduct as determined by a due process hearing of the Professional Standards Committee and affirmed by the Board of Directors. Future similar conduct could result in more severe sanction).

Upon completion of the discipline imposed by the time specified above, this matter will be considered closed.

Sincerely,

President (or Professional Standards Administrator)

NOTE: The second paragraph of this letter is an example; a letter of reprimand or warning may be the only discipline imposed. Likewise, the third paragraph of the sample letter could be deleted if no letter of reprimand or warning is issued when informing the parties of the Board of Director's final action.

Form #E-22

____
Board or State Association

____
Address City State Zip

Appeal of Grievance Committee (or Hearing Panel)*
Dismissal of Ethics Complaint

In the case of ____________________ vs. ____________________
Complainant Respondent

Check the appropriate box. Note that the complaint and any attachments to the complaint cannot be revised, modified, or supplemented. Directors consider only the information and documents considered by the Grievance Committee (or Hearing Panel)* with this form and explanation below.

❒ I/we appeal the dismissal of the above-referenced ethics complaint.

❒ I/we appeal the dismissal of Article(s) ____________________ from the above-referenced ethics complaint.

Explanation of why complainant disagrees with the Grievance Committee's (or Hearing Panel's) dismissal of complaint/Article(s):

____

____

____

____

Complainant(s):

Signature of Complainant	Signature of Complainant
Type/Print Name	Type/Print Name
Street Address	Street Address
City State Zip Code	City State Zip Code
(______) __________ Phone	(______) __________ Phone
Dated	Dated

*Hearing Panels that find a matter not timely filed should transmit their decision via correspondence (not Form #E-11, Decision of Ethics Hearing Panel of the Professional Standards Committee). Appellants appealing a Hearing Panel's dismissal should use this form.

(Revised 5/06)

Form #E-23

____
Board or State Association

____
Address City State Zip

Action of the Appeal Hearing Tribunal (Ethics Complaint)

The decision of the Grievance Committee (or Hearing Panel) to dismiss the ethics complaint, or a portion of the complaint, in the matter of:

________________________ vs. ________________________,
Complainant Respondent

dated ________________, was appealed by ________________ and was considered on ________________
Date Appellant Date

by the Appeal Tribunal of the Board of Directors of ________________.
Board/Association

The Appeal Tribunal's decision in the above-referenced case is to:

❐ Deny the appeal and uphold the Grievance Committee's (Hearing Panel's) decision.

❐ Grant the appeal and overturn the Grievance Committee's (Hearing Panel's) decision. This matter is hereby referred to a hearing before the Professional Standards Committee. You will be notified in the near future concerning a hearing date.

❐ Overturn the dismissal of Article(s) ________________ while upholding the dismissal of Article(s) ________________.

The decision above was rendered by an Appeal Tribunal of the Board of Directors of the ________________ comprised of the following members whose signatures are affixed below.
Board/Association

The appeal was considered and decision deemed final on ________________.
Date

________________________, Chairperson
Type/Print Name

____
Signature

________________________, Member
Type/Print Name

____
Signature

________________________, Member
Type/Print Name

____
Signature

________________________, Member
Type/Print Name

____
Signature

________________________, Member
Type/Print Name

____
Signature

(Revised 11/15)

ARBITRATION

Statements of Professional Standards Policy Applicable to Arbitration Proceedings

Approved by the Professional Standards Committee and the Board of Directors of the NATIONAL ASSOCIATION OF REALTORS®

1. Article 17, Code of Ethics

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)

2. Circumstances under which REALTORS® must submit to arbitration*

(a) Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board's MLS. REALTOR® nonprincipals and REALTOR ASSOCIATE®s who are affiliated with either the complainant or the respondent and have a vested financial interest in the outcome have the right to be present throughout the proceedings and to participate but are not considered to be parties. *(Revised 11/22)*

(b) A client of a REALTOR® principal may invoke the facilities of the Board in a business dispute with a REALTOR® principal or the REALTOR®'s firm (or both) arising out of an agency relationship, provided the client agrees to be bound by the arbitration. In the event of such request and agreement the Board will arbitrate the dispute subject to the Board's right to decline arbitration based on the amount involved or the legal complexity of the dispute. A REALTOR® principal may also invoke arbitration against his client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. *(Revised 5/01)*

*Refer to **Part Ten,** Section 44 of this Manual.

3. Circumstances under which arbitration is contingent upon the REALTOR®'s voluntary participation*

(a) REALTORS® and REALTOR ASSOCIATE®s who are or were affiliated with the same firm shall have the right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration. *(Amended 11/95)*

(b) A REALTOR® principal may invoke the arbitration facilities of the Board in a dispute arising out of the real estate business with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration. However, it shall be optional with the member as to whether he will submit to a claim to arbitration by a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration. *(Revised 11/12)*

(c) Business disputes between a REALTOR® principal and a customer of the REALTOR® principal may be arbitrated by the Board if a written contractual relationship has been created by a REALTOR® principal between a customer and a client and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute. *(Amended 11/95)*

4. Board's right to release parties from their obligation to arbitrate

If either the Grievance Committee or the arbitration panel determines that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated,

*Refer to **Part Ten,** Section 44 of this Manual.

the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to the Board of Directors within twenty (20) days of the date of notice that the Grievance Committee or the arbitration panel declined to continue the proceeding. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. In the event of such an appeal, the Grievance Committee or the arbitration panel shall report its conclusions to the Board of Directors and, if the Board of Directors concurs, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, or in the event of no appeal, any deposits made by the parties shall be returned to them. However, if the Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. *(Revised 11/95)*

5. Failure to submit to arbitration

If the complaint against a REALTOR® principal is that he has improperly refused to submit a dispute to arbitration (or to mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

6. Failure to abide by an award rendered by a Hearing Panel

If the complaint against the REALTOR® principal is that, having properly submitted a dispute to arbitration, he has refused to abide by an award, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless such refusal reflects an established pattern or practice of noncompliance with the commitment to arbitrate. A refusal to abide by an award in arbitration should be enforced in the manner set forth in **Part Ten,** Arbitration of Disputes, Section 56, Enforcement. *(Revised 11/95)*

7. No predetermination of any award in an arbitrable matter (Interpretation No. 31, Article I, Section 2, *Bylaws*, NATIONAL ASSOCIATION OF REALTORS®)

A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board which establishes, limits, or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.

Explanation of Official Interpretation No. 31: *In essence, this is a specific Interpretation of the general rule established in Interpretation No. 6 that a Board may not have a rule which restricts or limits the REALTOR® in the conduct of his business unless it concerns ethical practice. Thus, a rule of a Board or Multiple Listing Service which would determine a protection period in reference to a prospective purchaser is an inequitable limitation. Further, the Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.**

8. Holding of disputed funds by the Board of Directors

Member Boards shall not make a requirement that disputed funds be deposited with the Board by the respondent in an arbitration matter prior to an arbitration hearing, as it is beyond the legitimate authority of the Board or its Professional Standards Committee. However, this does not relieve REALTORS® of their responsibility to be prepared to abide by any determination made by the Board's arbitration panel and to satisfy any award consistent with Section 53 of the *Code of Ethics and Arbitration Manual*. *(Revised 11/16)*

9. Arbitration under circumstances other than those described in Section 44

A Member Board may provide arbitration procedures only in those instances described in **Part Ten,** Section 44, Duty and Privilege to Arbitrate, in this Manual.

10. Determining jurisdiction for the conduct of arbitration hearings

Absent an interboard arbitration agreement directing otherwise, the following factors determine the appropriate Board to conduct arbitration hearings in instances where parties hold membership in more than one Board or MLS: *(Revised 11/02)*

- Where all parties hold REALTOR® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in only one Board, that Board shall conduct arbitration.
- Where all parties hold REALTOR® membership or hold MLS participatory rights under the universal access to services component of Board of Choice in the same two (or more) Boards, arbitration will be conducted by the Board in which

*In connection with this National Association policy, refer to **Part Ten,** Appendix II, Arbitration Guidelines, in this Manual.

the property giving rise to the dispute is located. If the property is not within the jurisdiction of those Boards, the Board in which the arbitration request is filed will conduct arbitration.

- Where all parties do not hold membership in the same Board, and do not have MLS participatory rights under the universal access to services component of Board of Choice through the same Board, complainants may, at their discretion, invoke interboard arbitration or, alternatively, file arbitration requests with any Board in which the respondent holds REALTOR® membership or holds MLS participatory rights under the universal access to services component of Board of Choice. Pursuant to this provision, Boards must provide arbitration services in circumstances where it is determined by the Grievance Committee that an arbitrable dispute exists and the dispute is subject to mandatory arbitration. *(Revised 11/00)*

12. Adoption of Code of Ethics or Standards of Practice by Member Boards and State Associations

A local Board or State Association shall not adopt any set of rules, regulations, policies, and practices which purport to be in lieu of, in addition to, or an extension of the Code of Ethics and Standards of Practice of the NATIONAL ASSOCIATION OF REALTORS®. *(Amended 11/89)*

13. Articles and publications on the Code of Ethics

The National Association reserves the exclusive right to interpret the Code, its applications, and its proper enforcement to Member Boards and Board Members.

The National Association does not endorse or recommend any article or publication concerning ethics which is not published by the National Association or its institutes, societies, and councils and authorized by the National Association.

15. Arbitration between Board Members who are or were affiliated with the same firm

No Member Board may require REALTORS® and REALTOR-ASSOCIATE®s affiliated with the same firm to arbitrate disputes between themselves unless both parties voluntarily agree to arbitration in writing, and provided the Board finds the matter properly subject to arbitration.

18. Local Member Board requests for the conduct of ethics and arbitration hearings by the State Association

A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve either on a Hearing Panel or on behalf of the Board of Directors. If, after making all reasonable efforts, the Board still cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. *(Amended 11/03)*

In instances where a local Member Board determines by resolution of its Board of Directors that it is incapable of providing an impartial panel for the conduct of an ethics or arbitration hearing (or appeal or procedural review hearing), the complaint or the request for arbitration (and the ethics appeal or procedural review request, if any) may be referred by the Board President to the State Association of REALTORS® for a hearing. With regard to requests for arbitration, in the event the State Association declines to conduct the arbitration or to delegate its authority to another Board or regional enforcement facility, the parties shall be relieved of their obligation to arbitrate as established in Article 17 of the Code of Ethics. With regard to alleged violations of the Code of Ethics, such allegations may be received and considered by the State Association and (1) dismissed as unworthy of further consideration, (2) heard by a Hearing Panel of the State Association's Professional Standards Committee, or (3) referred to another Board or regional enforcement facility. If referred for a hearing to the State Association's Professional Standards Committee or to another local Board or regional enforcement facility, a Hearing Panel will be appointed to conduct the hearing and forward the determination and sanction, if any, to the local Member Board. The Board of Directors of the local Member Board shall then implement the decision of the Hearing Panel in strict accordance with its terms and conditions. Any requests for appeal or procedural review should be considered by an appropriate body of the State Association or "deputized" local Board or regional enforcement facility in accordance with the relevant established professional standards procedures. *(Amended 11/93)*

19. Confidentiality of determinations rendered in ethics and arbitration hearings

The allegations, findings, and decisions rendered in ethics and arbitration hearings are confidential and should not be reported or published by the Board, any member of a tribunal, or any party under any circumstances except those established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. *(Revised 11/91)*

20. Statement of policy related to Article 17 of the Code of Ethics

Article 17 is not to be construed as precluding a REALTOR® who is a defendant in litigation from joining a cooperating agent and/or subagent in the litigation.

21. Adoption of the *Code of Ethics and Arbitration Manual* by Member Boards

Member Boards and State Associations are not required to adopt the *Code of Ethics and Arbitration Manual* verbatim, but no Member Board may adopt or follow any procedures inconsistent with the precepts enunciated in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended.

22. Board and State Association publications or audiovisual programs concerning the Code of Ethics and its enforcement

Any articles, audiovisual programs, or any type of publication related to the Code of Ethics, its interpretation, or its enforcement that have not been prepared by or approved by the Professional Standards Committee of the National Association must be prefaced by a statement indicating that the contents reflect the understanding and opinions of the author(s) and do not represent an official expression of policy by the National Association. To the extent that any article, audiovisual program, or publication prepared by any individual or organization other than the National Association varies in any degree from the Code of Ethics, its interpretation, or its enforcement procedures as approved by the Professional Standards Committee of the National Association, the policies of the National Association shall take precedence.

No article, audiovisual program, or other publication may be designated as an official expression of policy concerning the Code of Ethics, its interpretation, or its enforcement without the express written approval of the National Association.

Local Boards and State Associations are encouraged to consider preparation of such articles, audiovisual programs, or other publications and are requested to submit them to the Professional Standards Committee or its staff representatives for review and approval prior to publication.

23. Disputes arising out of circumstances occurring prior to the time a REALTOR® is elected to board membership

While REALTORS® are encouraged to resolve all disputes through the arbitration facilities of their Board or Boards, the intent of Article 17 is that only disputes arising from facts occurring after each of the parties has become a REALTOR® are subject to mandatory arbitration under Article 17 of the Code of Ethics.

24. Formulation of Multi-Board or Regional Grievance or Professional Standards Committees for Code enforcement in areas where Boards have limited membership

Member Boards are authorized to enter into collective agreements by which the Boards would share the responsibility for enforcement of the Code of Ethics, including the conduct of arbitration hearings, on a joint basis.*

25. Expenses related to conduct of hearings by Multi-Board or regional Grievance or Professional Standards Committees

✍ Expenses related to the conduct of hearings by a multi-Board or regional Grievance Committee or Professional Standards Committee shall be as established by written agreement between the signatory Boards. The expenses of such hearings shall be borne by the signatory Boards and shall not be supported by fees charged to the members other than as otherwise authorized by the *Code of Ethics and Arbitration Manual*. *(Revised 11/98)*

26. Burdens and standards of proof in arbitration and ethics hearings

In any ethics hearing or other hearing convened to consider alleged violations of membership duties and in any arbitration hearing, the ultimate burden of proving that the Code of Ethics or other membership duty has been violated, or that an arbitration award should be issued to the requesting party, is at all times on complainants and parties requesting arbitration.

The standard of proof on which an arbitration hearing decision is based shall be a "preponderance of the evidence." Preponderance of the evidence shall be defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the facts sought to be proved are more probable than not.

"Clear, strong, and convincing" shall be the standard of proof by which alleged violations of all membership duties, including violations of the Code of Ethics, are determined. Clear, strong, and convincing shall be defined as that measure or degree of proof which will produce a firm belief or conviction as to the allegations sought to be established. *(Revised 2/92)*

Appeals of ethics Hearing Panel decisions based on an alleged misapplication or misinterpretation of an Article(s) of the Code of Ethics shall be determined based on the correctness of the Hearing Panel's decision.

Appeals of ethics Hearing Panel decisions based on an alleged procedural deficiency or failure of due process, and procedural review of arbitration hearing procedures shall be determined based

*A sample format agreement approved by the Professional Standards Committee to establish a collective agreement is included as Specimen Forms #E-19 in **Part Six** and #A-19 in **Part Thirteen** of this Manual.

on whether the effect of the deficiency was to deny the appellant a fair hearing.

Appeal panels may modify discipline proposed by Hearing Panels only in instances where the discipline proposed is not authorized or where the appeal panel concludes that the Hearing Panel abused its discretion. *(Adopted 11/99)*

27. Consolidation of arbitration claims arising out of the same transaction

When reviewing requests for arbitration, Grievance Committees should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may be related claims involving other parties arising out of the same facts, the Grievance Committee may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time. *(Revised 11/92)*

28. Participation in litigation rather than arbitration

In instances where a REALTOR® is a party to litigation involving an otherwise arbitrable matter and none of the parties invokes the Board's arbitration facility prior to or during the course of litigation, any member involved in the litigation may not thereafter be charged with failing or refusing to arbitrate. *(Revised 11/92)*

30. Participation in voluntary arbitration

Article 17 is not to be construed as precluding a REALTOR® from instituting litigation or causing a dispute to be brought before an alternative dispute-resolving forum other than the Board of REALTORS® under those circumstances where submission of the dispute to the Board would be voluntary. *(Adopted 5/88)*

31. "Cooperation" defined

The obligation to cooperate, established in Article 3 of the Code of Ethics, relates to a REALTOR®'s obligation to share information on listed property and to make property available to other brokers for showing to prospective purchasers when it is in the best interest of the seller. An offer of cooperation does not necessarily include an offer to compensate a cooperating broker. Compensation in a cooperative transaction results from either a blanket offer of subagency made through MLS or otherwise, or offers to compensate buyer agents, or, alternatively, individual offers made to subagents or to buyer agents, or other arrangements as negotiated between listing and cooperating brokers prior to the time an offer to purchase is submitted. *(Revised 11/09)*

33. Use of panels in place of Committees and the Board of Directors

Any matter brought before the Grievance Committee, Professional Standards Committee, or Board of Directors may be considered by a panel of members or Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Three (3) or more members shall constitute a panel of the Grievance and Professional Standards Committees that can act on behalf of those committees. Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute a panel of the Board of Directors, that can act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the full Committee or the full Board of Directors, except as otherwise provided in this Manual.

Panel members should be experienced, knowledgeable persons of judicial temperament.

In appointing such a panel, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

Associations are also authorized to adopt policies and procedures assigning Grievance Committee functions to a panel of the Professional Standards Committee. Where Grievance Committee functions are delegated to a panel of the Professional Standards Committee, all provisions of this Manual applicable to Grievance Committees will apply to a panel of the Professional Standards Committee acting in that capacity. Three (3) or more members shall constitute a panel of the Professional Standards Committee to assume the responsibilities of the Grievance Committee. *(Adopted 05/15)*

When possible, panels should be strongly encouraged to use conference calls, virtual meetings, or alternative communication technologies for meetings to expedite the decision-making process. Use of conference calls, virtual meetings, or alternative communication technologies during the course of a hearing shall be governed by Professional Standards Policy Statement #56, Remote Testimony and Virtual Hearings. *(Revised 11/21)*

35. Separation of ethics complaint and arbitration request

When an ethics complaint and an arbitration request are filed at the same time arising out of the same facts and circumstances, the arbitration hearing shall be held first and the ethics hearing shall be conducted by a different Hearing Panel after the conclusion of the arbitration hearing. *(Adopted 11/93)*

38. Hearing Panels to be conversant with applicable state law under board of choice across state lines

Where membership is provided under board of choice across state lines, Hearing Panels must be conversant with and apply the relevant state's laws and regulations in determining how the Code of Ethics will be interpreted/ applied in instances where the underlying transaction occurred out of state and involved a respondent licensed in that state. *(Adopted 11/95)*

39. Awards escrowed under board of choice across state lines

Where one or more parties to an arbitrable issue have obtained membership under board of choice across state lines, awards rendered shall be escrowed by the Board that conducted arbitration in a manner consistent with the procedures in Section 53, The Award, *Code of Ethics and Arbitration Manual*. *(Adopted 11/95)*

40. Cooperative enforcement agreements

To ensure fair, impartial and knowledgeable enforcement of the Code of Ethics (including arbitration) there must be adequately large groups of knowledgeable, trained REALTORS® and REALTOR ASSOCIATES® from which the necessary committees and tribunals can be appointed. To this end, Boards and Associations are required to enter into cooperative enforcement agreements to ensure Boards and/or Associations have an aggregate total of at least three hundred fifty (350) primary REALTOR® and/or REALTOR ASSOCIATE® members from which to compose Hearing Panels. It is recommended but not required that representation/participation in any multi-board regional cooperative enforcement agreement be on a pro-rata basis. This requirement does not apply in instances where, in the opinion of the state association, unique geographical considerations (e.g., islands, remote locale, etc.), logistical difficulties or other impediments make participation prohibitive. All Boards regardless of size (except Commercial Overlay Boards) must participate with at least one other Board (which may be the state association) in a cooperative enforcement agreement. *(Revised 5/08)*

41. Arbitration Guidelines to parties

Boards conducting arbitration are required to provide all parties and panel members with the Arbitration Guidelines and Arbitration Worksheet prior to commencement of any arbitration hearing. *(Revised 11/16)*

42. Previously dismissed ethics complaints/ arbitration requests

If an ethics complaint or arbitration request is received and reviewed by a Board's Grievance Committee or Board of Directors and is dismissed as not warranting a hearing, the respondent(s) shall not subsequently become subject to the same (or substantially similar) ethics complaint or arbitration request in the same or another Board. *(Adopted 5/97)*

Dismissal of an arbitration request by a Board of REALTORS® because the dispute is not arbitrable based on Article 17 or other grounds established in the *Code of Ethics and Arbitration Manual,* does not prohibit REALTORS® from exercising other remedies that may be available to them, including litigation. *(Adopted 5/99)*

43. Duty to arbitrate personal

The privilege to invoke arbitration and the duty to arbitrate is personal. Although any REALTOR® principal may invoke the arbitration facilities of a Board and be required to arbitrate, REALTOR® principals may not delegate this privilege or obligation. *(Adopted 11/98)*

44. Effective dates of the Code of Ethics and Standards of Practice and the *Code of Ethics and Arbitration Manual.*

All changes to the Code of Ethics and Standards of Practice carry an annual effective date of January 1 of the year following their approval by the Board of Directors of the National Association and, where necessary, by the Delegate Body. *(Adopted 11/89)*

To ensure consistent, uniform enforcement of the Code of Ethics nationwide, all changes in professional standards policy normally incorporated into the National Association's *Code of Ethics and Arbitration Manual* become effective on January 1 of the year following their approval by the Board of Directors of the National Association. Unless specifically provided otherwise by the Board of Directors, associations shall have sixty (60) days from their effective date to adopt them. *(Revised 05/15)*

All new and amended Case Interpretations become effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor. *(Adopted 5/98)*

46. Duty to arbitrate after membership lapses or is terminated

The duty to submit to arbitration continues in effect after membership lapses or is terminated provided that the dispute arose prior to the time the respondent's membership lapsed or was terminated. *(Adopted 5/99)*

49. Professional standards administration training

Enforcement of the Code of Ethics is a privilege and responsibility of each Board and Association as established in Article IV of the *Bylaws* of the NATIONAL ASSOCIATION OF REALTORS®. Every Board and Association must designate a person or entity responsible for administration of professional standards processes. Persons primarily responsible for administration of professional standards processes must successfully complete training every four (4) years on professional standards administration meeting the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time. *(Revised 11/14)*

50. Separate subcommittees for ethics, arbitration, and mediation

Boards and Associations can meet their professional standards enforcement responsibility through separate committees or subcommittees specifically delegated responsibility for arbitration, mediation, the conduct of hearings to resolve ethics complaints and alleged violations of other membership duties and to conduct ombudsman programs. *(Revised 05/15)*

51. Mediators used by Boards

Mediators used by Boards and Associations to resolve contractual disputes and noncontractual disputes defined in Standard of Practice 17-4 may be REALTORS®, Board/Association staff, or others whose services a Board/Association chooses to utilize. *(Adopted 11/99)*

52. Boards to provide mediation

The duty of local Boards and Associations to provide mediation services established in Article IV, Section 2 of the Bylaws of the NATIONAL ASSOCIATION OF REALTORS® can be met through provision of mediation services by local Boards and Associations; through multi-Board/regional cooperative enforcement agreements; or through agreement/arrangement with the state association.

Upon receipt of an arbitration request, mediation services shall be offered to disputants prior to review of the arbitration request by the Grievance Committee except where any party requests the Grievance Committee's determination whether an arbitrable issue exists between the named parties and whether the parties would be required to arbitrate.

If the association requires its members to participate in mediation and the Grievance Committee determines that an arbitrable issue exists, the obligation to participate in mediation remains in effect.

Where any party initially declines to mediate pending the Grievance Committee's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Committee's review. *(Adopted 11/99, Amended 5/12)*

53. Dispute resolution fees not to exceed maximum arbitration fee

Effective January 1, 2002, the fees charged for Board/Association dispute resolution services, i.e., mediation and arbitration, may not exceed the maximum arbitration filing fees authorized in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. Boards/Associations may, as a matter of local option, retain part or all of the filing fees paid, irrespective of whether disputes are resolved through mediation or arbitration. *(Adopted 11/99)*

54. Personal safety in professional standards proceedings

Boards and Associations should take reasonable steps to ensure the personal safety of parties, panelists, witnesses, staff, and others participating in professional standards proceedings. In instances where, in the opinion of the presiding committee or Hearing Panel Chair, there is an unacceptable risk posed to the safety of any participant, the proceedings will be recessed so the Chair can consult with staff, Board or Association elected leadership, or Board or Association counsel to identify and take steps to ensure the safety of all participants and to permit the proceedings to resume.

If after consulting with staff, Board or Association counsel, and any other appropriate party or agency (including law enforcement authorities), and after taking reasonable steps to attempt to resume the proceeding while ensuring the safety of all participants, the Board of Directors concludes it will be unduly difficult or impossible to ensure the safety of all participants, the proceedings will be postponed indefinitely and resumed only when the Board of Directors (or its successor) concludes that the proceedings can be safely resumed. Where proceedings are postponed indefinitely by action of the Board of Directors, a memorandum detailing the circumstances shall be appended to the case file and maintained on a permanent basis. The Board of Directors may, at their discretion, share any or all information including the complaint, response, or other documentation or information in their possession with appropriate law enforcement or other government agencies. *(Adopted 5/00)*

55. Transmitting devices

Cellular phones, two-way radios and other transmitting devices may not be operated during ethics hearings, arbitration hearings, appeal hearings, and procedural review hearings absent specific, advance authorization from the panel chair. *(Adopted 11/04)*

56. Remote testimony and virtual hearings

The policies and procedures established in the National Association's *Code of Ethics and Arbitration Manual* contemplate that parties and their witnesses will participate in ethics and arbitration hearings in the physical presence of hearing panels and the respective parties, or, at the association's sole discretion, in virtual hearings. If hearings are in person, parties and their witnesses may request permission to participate in such proceedings remotely. *(Revised 11/21)*

Parties and witnesses to ethics and arbitration hearings may be permitted to participate remotely in hearings at the discretion of the hearing panel chair. Only those parties eligible to attend the entire hearing in person would be entitled to participate remotely for the entirety of the hearing. Witnesses may only participate remotely for their own testimony. *(Revised 11/21)*

Hearing panels, association staff, or association counsel should employ steps to verify the identity of remote participants, to preclude unauthorized individuals from being in the presence of the remote participant, and to employ appropriate safeguards to ensure confidentiality of the proceedings. *(Revised 11/21)*

58. Circumstances under which disputes may be mediated if REALTORS® voluntarily agree

While mediation can only be mandated under the circumstances expressly established in Article 17 of the Code of Ethics, Boards and Association may, at their discretion, offer mediation, and REALTORS® may voluntarily participate in mediation, where disputing parties voluntarily request mediation. The circumstances under which voluntary mediation may occur include:

(1) disputes between REALTORS® associated with different firms where no arbitration request has been filed

(2) disputes between REALTORS® and their clients where no arbitration request has been filed

(3) disputes between REALTORS® who are or were affiliated with the same firm when the dispute arose

(4) disputes between REALTORS® and non-member brokers

(5) disputes between REALTORS® and their customers

(Adopted 5/11)

59. Associations to provide ombudsman services

Every local and state association of REALTORS® is required to offer, either directly or as part of a cooperative enforcement agreement (consistent with Professional Standards Policy Statement #40, Cooperative Enforcement Agreements), ombudsman services to members, clients, and consumers on or before January 1, 2016. *(Adopted 11/14)*

60. "Alternate" hearing panelists

Associations may, but are not required to, convene hearing panels that include one or more alternate members. If alternates are present at hearings, they should be seated apart from the hearing panel, may not participate in any way unless called on to replace a panel member, and are bound by the same duties that are applicable to panel members.

If alternate panel members are not called on to replace a panel member and if the association's policy allows them to be present at post-hearing executive session deliberations, alternates may not be involved in deliberating or deciding the matter before the hearing panel. *(Adopted 11/14)*

61. Arbitration procedures governing nonmembers

Nonmembers arbitrating pursuant to an agreement to participate in a REALTOR® association owned and operated MLS shall be subject to all obligations under an association's arbitration procedures, including, but not limited to, the obligation to pay an award promptly or deposit a like amount in the event of a challenge pursuant to Section 53, The Award, *Code of Ethics and Arbitration Manual*.

Failure to pay arbitration awards or deposit a like amount in these circumstances may be a violation of the MLS rules and subject the nonmember to sanction. *(Adopted 11/15)*

Part Seven — Arbitration General Provisions

Section 26. Definitions Relating to Arbitration

As used herein,

(a) "Agent" means a real estate licensee (including brokers and sales associates) acting in an agency relationship as defined by state law or regulation. *(Revised 4/98)*

(b) "Association" means this organization, either the ______________________________ (local) Association of REALTORS® or the __________________________ (state) Association of REALTORS®. As used herein, the term "association(s)" refers to board(s) and association(s) of REALTORS®. *(Revised 11/17)*

(c) "Broker" means a real estate licensee (including brokers and sales associates) acting as an agent or in a legally recognized non-agency capacity. *(Adopted 4/98)*

(d) "Client" means the person(s) or entity(ies) with whom a REALTOR® or a REALTOR®'s firm has an agency or legally recognized non-agency relationship. *(Revised 11/97)*

(e) "Counsel" means an attorney at law. *(Adopted 4/91)*

(f) "Customer" means a party to a real estate transaction who receives information, services, or benefits but has no contractual relationship with the REALTORS® or the REALTOR®'s firm. *(Revised 11/97)*

(g) "Directors" means the Board of Directors of the Board (State Association) as interpreted by Policy Statement #33. *(Revised 11/91)*

(h) "Electronically," "electronic means," "technology," "technological means," and related terms include, but are not limited to, the Internet, Internet-based websites, all forms of Internet communication, e-mail, facsimile correspondence, telephone, and all other forms of distance communication. *(Adopted 5/06)*

(i) "Hearing" may refer either to an ethics hearing relating to disciplinary matters or to an arbitration hearing in which the dispute generally involves entitlement to a commission or to compensation. *(Revised 11/93)*

(j) "In person" means in one's physical presence. *(Adopted 11/21)*

(k) "Member" means REALTOR® and REALTOR ASSOCIATE® members of this Board (State Association). REALTORS® who participate in MLS or otherwise access MLS information through any Board in which they do not hold membership are subject to the Code of Ethics in that Board. *(Amended 11/95)*

(l) "On site" means in the physical presence at a particular location or site. *(Adopted 11/21)*

(m) "Party" (Parties) means the complainant(s) or respondent(s) in disciplinary proceedings and in arbitration hearings referred to in **Part Four** and **Part Ten** of this Manual. *(Revised 11/91)*

(n) "Person" means a natural person. *(Adopted 11/13)*

(o) "Professional Standards Administrator" is the Board staff person primarily responsible for the administration of all professional standards processes. *(Adopted 11/15)*

(p) "REALTOR® principal" includes licensed or certified individuals who are sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm who subscribe to the Code of Ethics as a condition of membership in a local Board, State Association, and the NATIONAL ASSOCIATION OF REALTORS®. The phrase REALTOR® principal includes those REALTORS® who participate in a Multiple Listing Service through any Board or Association in which they do not hold membership. *(Revised 5/97)*

(q) "Remote" means from a distance without physical presence, i.e., video or teleconference. *(Adopted 11/21)*

(r) "Tribunal" means those persons serving in a given case on a Grievance Committee or a Hearing Panel of the Professional Standards Committee in either an ethics or arbitration proceeding, or a Board of Directors or appropriate body appointed by a Board of Directors to act in its behalf. No individual may participate in the deliberation of more than one tribunal on the same matter. *(Revised 5/88)*

(r) Although ombuds and mediators who serve in either capacity are not part of a tribunal, they nonetheless may not participate in the deliberation of any tribunal on the same matter for which they provided the ombuds or mediation service. An ombuds may not serve as a mediator on the same matter for which they provided the ombuds service. *(Adopted 11/22)*

(s) "Unauthorized disclosure" means a report or publication under any circumstances not established in this Manual. *(Adopted 11/91)*

(t) "Virtual" means existing, seen, or happening on-line or on a computer screen rather than in person or in the physical presence. *(Adopted 11/21)*

Section 27. Qualification for Tribunal

(a) No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated. *(Revised 11/09)*

(b) A person shall automatically be disqualified as a member of a tribunal in any case in which the person is (1) related by blood or marriage to either complainant or respondent; (2) an employer, partner, employee, or in any way associated in business with either complainant or respondent; (3) a party to the hearing, or a party or a witness in any other pending case involving a party to this hearing; or (4) is objected to by a party as provided in **Part Seven,** Section 27(f).

(c) Before sitting in any case, each member of a tribunal (except any member of the Grievance Committee) shall sign a statement (1) that the member is not disqualified for any of the foregoing reasons, and (2) that the member knows of no other reason that might prevent him from rendering an impartial decision. (Form #A-11, Certificate of Qualification, **Part Thirteen** of this Manual.)

(d) Every member of a tribunal (except a member of the Grievance Committee acting pursuant to the provisions of **Part Ten,** Section 47 of this Manual) shall also avoid, as far as possible, discussing the case with any person other than a member of the tribunal prior to commencement of the hearing. If the member does engage in any such discussion before the hearing, the member must disclose the fact to the parties and to the other members of the tribunal no later than at the beginning of the hearing.

(e) All members of a tribunal shall have an obligation to maintain and protect the confidentiality of the proceedings and deliberations of the tribunal before, during, and after its determinations and recommendations. The tribunal member shall not discuss the tribunal proceedings and deliberations with any person(s) except as required by the Board of Directors or the bylaw provisions of the Board, or by law as may be required, except that a member of the Grievance Committee acting pursuant to the provisions of **Part Ten,** Section 47 of this Manual shall not be precluded from discussion necessary to the preliminary review.

Unauthorized disclosure relates to tribunal members and parties and includes any report or publication under any circumstances not established in this Manual. The following are circumstances where disclosure by a party to an ethics and/or arbitration proceeding is authorized:

(1) Where the dissemination of the decision to individuals who have some knowledge of the proceeding might vindicate a member's professional reputation.

(2) Where there is a civil proceeding (including proceedings before the state real estate licensing authority or any other state or federal regulatory or administrative agency) involving the same facts and circumstances which gave rise to the proceeding before the Board. *(Revised 11/95)*

(3) Where providing the decision of an arbitration hearing panel to an association of REALTORS® or to an MLS will enable that entity to correct records of sales or lease transactions or other historical records. *(Revised 11/06)*

(f) Any party may file with the Professional Standards Administrator a written request for disqualification of a member of a tribunal (Hearing Panel or Board of Directors), stating the grounds alleged as basis for disqualification (i.e., factors which would prevent a tribunal member from rendering an impartial, unbiased, and knowledgeable decision). Challenges submitted pursuant to this Section for ethics and arbitration hearings will be determined by the Professional Standards Committee Chairperson, or, if challenge to the Chairperson is made, by the Professional Standards Committee Vice Chairperson, or, if challenge to both the Chairperson and Vice Chairperson is made, by the Board President. Challenges submitted pursuant to this Section for matters to be considered by the Board of Directors will be determined by the Board President or, if the challenge is to the Board President's qualifications, the next ranking Board officer. A party shall be deemed to have waived any grounds of disqualification of which he then has knowledge unless he files the request within ten (10) days from the date a list of names of members of the Professional Standards Committee or Board of Directors has been transmitted to the party (see **Part Ten,** Section 51(a), Arbitration Hearing). However, any member of the tribunal may be disqualified at any time if a majority of the members of the tribunal are made aware of any grounds of automatic disqualification of a member or find any new or previously undiscovered facts which in their judgment may prevent, or appear to prevent, a member of a tribunal from rendering an impartial decision. *(Revised 11/14)*

However, none of the foregoing is to be construed to allow a challenge to the qualifications of members of a Board's or State Association's Grievance Committee, or Board of Directors (or panel of Directors or Executive Committee) convened to review any action taken by a Grievance Committee. *(Revised 11/98)*

(g) If a member of a tribunal fails or is unable to participate in a hearing, the remaining members of the tribunal may, at their option, but only with the express consent of the parties, proceed with the hearing. Only the remaining members of the tribunal may participate in the hearing and the determination thereof. Should any member of the tribunal absent himself during the progress of the actual hearing, that individual shall likewise not participate in the deliberations nor determinations thereof. If all the parties do not agree to proceeding without the full number of the tribunal originally designated, the Chairperson of the tribunal will recess the hearing to a date on which all members of the tribunal can be present. If the Chairperson cannot at that time designate a new date, notice of a subsequent date shall be served on all parties as herein provided.

Section 28. Duty to Give Evidence

The parties to ethics and arbitration hearings are primarily responsible for production of witnesses and evidence they intend to present to the Hearing Panel. If a member, when called as a witness, refuses or is unable to appear at a scheduled hearing, the witness's failure to appear can be the basis for a charge that Article 14 has been violated if it can be shown that the witness had information or evidence relevant to the issue or issues before the Hearing Panel and that there were no extenuating circumstances that would have made the witness's appearance unduly burdensome. Questions regarding a member's obligation to appear as a witness, including questions of relevancy, shall be determined by the Chair of the Hearing Panel either before the hearing commences, if possible, or at the time of the hearing. If a question of whether a witness is required to appear is raised at a hearing and the Chair rules that the witness must appear, the party seeking to compel the appearance of the witness may request that the hearing be recessed until such time as the witness can be advised of the witness's obligation to appear, and the hearing shall be rescheduled. The burden of demonstrating the relevance of the testimony or evidence rests with the party seeking to compel the witness's appearance. *(Revised 11/93)*

If, after being so advised, a witness refuses to appear, the Chair may, at its discretion, bring a charge against the witness for failure to comply with Article 14. *(Revised 11/93)*

Section 29. Right of Counsel to Appear

Every party may be represented by legal counsel but such counsel may not testify as a witness unless the panel determines such testimony is essential to ensure due process. In the event parties do not give fifteen (15) days' notice prior to the hearing of their intention to have counsel to the Board and all other parties, including counsel's name, address, and phone number, the panel shall take all steps, including continuance of the matter, if necessary, to guarantee the rights of all parties to representation by counsel. The tribunal may have counsel present to advise it on issues of procedure and law. The presence of Board legal counsel during executive session is a matter of local Board discretion. The role of Board counsel during a hearing is to provide procedural and legal guidance as requested by the Chairperson or by panel members. Board counsel is not a part of the Hearing Panel and may not take an active role in the conduct of the hearing, including examination or cross-examination of the parties or their witnesses. If Board counsel believes an action or procedure is inconsistent with the Board's established procedures or may result in potential liability to the Board, counsel's concerns should be communicated to the Chairperson of the Hearing Panel and the Chairperson shall make the final decision. *(Revised 11/97)*

Section 30. Witnesses

Every party may have witnesses present at the hearing, and the tribunal may summon its own witnesses. All witnesses, except those who are also parties, will be excused from the hearing after completion of their testimony and cross-examination, unless otherwise provided for in the *Code of Ethics and Arbitration Manual (Revised 11/14)*

All parties appearing at the hearing may be called as witnesses without advance notice. Any party who intends to call additional witnesses at the hearing must provide the Board and all other parties with the names of these witnesses at least fifteen (15) days prior to the hearing. Failure to provide this information within the time specified will constitute a waiver of the right to call those witnesses at the hearing, unless the other party agrees to allow their testimony. *(Revised 11/14)*

In any case where all of the names of witnesses a party intends to call at the hearing have not been provided within the time specified, if the Hearing Panel believes that the testimony of that witness(es) is essential to ensure due process, his testimony may be permitted provided the other party has the right to request that the hearing be recessed and continued to a date certain not less than five (5) days later. *(Revised 11/88)*

Questions as to whether a member who has been called as a witness but who refuses to appear, or asserts that his appearance will result in an unreasonable hardship, shall be determined by the Hearing Panel Chair as soon as practical. Refusal to appear, after the Chair has determined that the member's appearance is required, may result, at the Chair's discretion, in charges that Article 14 has been violated being filed against the member. *(Adopted 11/93)*

Section 31. Conduct of Hearing

At any ethics or arbitration hearing, every party has the right to present any witnesses, to submit any evidence pertinent to the case, and to cross-examine witnesses. Witnesses giving oral testimony shall be sworn in or affirmed by the Chairperson in accordance with the policy of the association. Before permitting testimony relating to the character or general reputation of anyone, the tribunal shall satisfy itself that the testimony has a direct bearing on the case at issue. *(Revised 11/21)*

Attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused from the hearing except during their testimony [except those witnesses with a vested financial interest consistent with **Part Ten,** Section 44(a)(2), Duty and Privilege to Arbitrate]); the Hearing Panel members (including alternates); Board staff and/or counsel, as deemed necessary; and any court reporter, as requested. *(Revised 5/16)*

The Board shall have a court reporter present at the hearing or shall record the hearing. Parties may, at the Board's discretion, record the hearing or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording (See Form #A-10, Outline of Procedure for Arbitration Hearing, Part Thirteen, and Conduct of an Arbitration Hearing, Part Twelve). *(Revised 5/16)*

Videotaping of the proceedings shall not be permitted except by advance express consent of all parties and all members of the tribunal. Any and all recording should be conducted in accordance with state law. *(Revised 11/21)*

Appeals or procedural review proceedings shall not be recorded by the Board or the parties. *(Revised 5/16)*

The Board's recording or transcription shall be considered the official record of the proceeding. Copies of any recording or any transcript prepared from any recording of the hearing are to be used only for the purpose of appeals or limited procedural reviews, and may not be introduced into evidence at any subsequent hearing. Boards, at their discretion and upon the advice of counsel, may prohibit the parties from obtaining a copy of the recording or transcription if the request is received outside of the time frame allowed for appeals or procedural reviews. Any unauthorized use of the recordings or transcripts may be construed as a violation of Article 14, as interpreted by the applicable Standards of Practice, and as a violation of these procedures. *(Revised 5/16)*

Any party to a hearing has the right to obtain a copy of the Board's official recording, subject to the aforementioned limitations, and subject to payment of the Board's duplication costs. Any duplication will be conducted under the supervision of the Board. If the Board transcribes its official recording, any party to the hearing may obtain a copy of the transcript, subject to the aforementioned limitations and paying the Board's transcription costs. If more than one party requests copies of the transcript, the Board's costs will be apportioned between or among the parties. *(Revised 5/16)*

If a party purchases a copy of the Board's official recording and subsequently has it transcribed at his own expense, that party must provide a copy of the transcript to the Board at no cost. After the Board has received a copy of the transcript (made from the Board's official recording), the Board shall make copies of the transcript available to any other party subject to their payment of the Board's duplication costs. *(Revised 11/10)*

It is recommended that recordings produced by the Board be maintained in the confidential professional standards files until a date when any sanction imposed by the Board has been completed. *(Revised 5/16)*

Section 32. Notices

(a) Any notice required to be given or paper required to be served or filed may be personally handed to the party to be notified, sent by first class mail addressed to the party's last known mailing address, or sent to the party by email. When possible, email is the preferred form of service for notices and documents pursuant the procedures specified in this Manual. Any notice required to be given or paper required to be served or filed shall be deemed given, served, or filed when handed to the party, mailed to the party, or sent to the party by email, unless otherwise specified in this Manual. Notices sent by email shall include the association's request that delivery be acknowledged by the intended recipient within twenty-four (24) hours by return email. If receipt of the notice has not been acknowledged by the intended recipient within twenty-four (24) hours, the recipient will be contacted by telephone to confirm receipt and the recipient's confirmation will be noted in the file. If receipt of notices sent by email cannot be confirmed, the notices will be resent via first class mail. *(Revised 11/14)*

(b) Notice of hearing shall include the names of the members of the tribunal and be given not less than twenty-one (21) days beforehand. Twenty-one (21) days' notice is not required for postponed hearings (scheduled but extension granted before hearing commences) or for hearings that have commenced and been adjourned (recessed). *(Revised 11/14)*

Section 33. Interpretation of Bylaws

If any provision of the bylaws or a rule or regulation relative to the procedure of a tribunal's handling of a matter is involved, the interpretation by that tribunal of the bylaws or of a rule or regulation shall be set forth as a separate finding, and the Directors, on appeal from a decision of a Hearing Panel, shall not be bound by the panel's interpretation.

Section 34. Waiver

Every member, for and in consideration of his right to invoke arbitration proceedings and to initiate complaints under the Code of Ethics as a member of the NATIONAL ASSOCIATION OF REALTORS®, hereby waives any right of action against the Board, any Board Member, or any member of a Hearing Panel or tribunal arising out of any decisions, determinations, or other action taken or rendered under these procedures in the absence of willful or wanton misconduct. Further, as a condition of continued membership, every member expressly waives any cause of action for libel, slander, or defamation that might arise from the filing or consideration of any ethics complaint or arbitration request. *(Revised 11/87)*

Section 35. Communication and Clerical

Communications shall be directed to the Professional Standards Administrator. The Professional Standards Administrator shall render all necessary assistance to the parties, shall furnish required forms, shall receive and file all documents or other papers, and shall receive all fees and disburse all monies payable to the Board.

Section 36. Attempt to Influence Tribunal

Any attempt, directly or indirectly, to influence a member of a tribunal in any matter before it, other than by giving evidence and argument in an open hearing or in writing submitted to the entire tribunal, is a breach of a duty of membership.

Part Eight — Membership Duties and Their Enforcement

Section 37. Duties of Membership

The duties of membership include the following:
(a) to abide by the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®
(b) to abide by the bylaws of this Board and its rules and regulations
(c) to submit to arbitration all disputes specified in **Part Ten** of this Manual by the procedure therein provided, and to abide by the arbitrators' award* *(Revised 11/96)*

Subject to any preliminary consideration by any administrative body of the Board or its subsidiary MLS, allegations or charges that a member has violated any membership duty shall be referred to the Professional Standards Committee for review in conformity with the procedures established in the *Code of Ethics and Arbitration Manual* of the National Association as from time to time amended. Notwithstanding the foregoing, multiple listing services operated as committees of associations of REALTORS®or as subsidiary corporations wholly-owned by associations of REALTORS® may establish procedures for enforcement of their rules and regulations pursuant to the grant of authority and to the limitations established in Multiple Listing Policy Statement 7.21, Appropriate Procedures for Rules Enforcement, *Handbook on Multiple Listing Policy*. *(Revised 11/14)*

Section 38. Selection and Appointment of the Grievance Committee

There will be a standing committee, known as the Grievance Committee, of at least ____ Board Members, in good standing, of whom at least a majority shall be REALTORS®. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee). The Grievance Committee will hold regularly-scheduled meetings and/or review complaints/arbitration requests not later than forty-five (45) days after receipt of the complaint/arbitration request. *(Revised 05/15)*

In selecting members of the Grievance Committee, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm
- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR ASSOCIATE®s, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. It is suggested that, to the extent practical, members of the Grievance Committee not serve simultaneously on the Professional Standards Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. *(Revised 11/96)*

Section 39. Selection and Appointment of the Professional Standards Committee

There shall be a Professional Standards Committee of at least ______ Board Members, in good standing, of whom at least a majority shall be REALTORS®, appointed by the President, subject to confirmation by the Board of Directors. Members of the Professional Standards Committee shall be selected to serve on Hearing Panels as required to hear matters of alleged unethical conduct by Board Members or to provide arbitration as requested. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

In selecting members of the Professional Standards Committee, the President should consider the following recommended criteria:

- number of years as a REALTOR®
- number of years in the real estate business
- primary and secondary fields of real estate endeavor/expertise
- participation in post-licensing real estate education
- training in the Code of Ethics
- position in firm (principal, nonprincipal)
- size of firm

*While most states recognize the enforceability of a prior agreement to arbitrate disputes, a few states prohibit an agreement to arbitrate until after the dispute has arisen and in a few instance such arbitration is not recognized at all (or at least is unenforceable by the court). Where such prohibition exists, Board (state) legal counsel should be consulted and the Manual modified accordingly. Arbitration conducted by Member Boards shall in all respects conform to the requirements of state law applicable to arbitration. If a member refuses to abide by an award in arbitration, enforcement of the award shall be accomplished only in the manner set forth in **Part Four,** Section 24 and **Part Ten,** Section 56 of this Manual.

*In Boards with larger memberships, it is desirable for a larger committee to be named to avoid an overload of work upon any individual which could result from the greater number of hearings in these Boards. In such Boards, an uneven number of members from the Professional Standards Committee may be appointed to constitute a Hearing Panel for each case to be heard. *(Revised 11/92)*

- common sense
- open-mindedness
- familiarity with state(s) laws and regulations
- receptiveness to instruction/training
- other relevant professional or procedural training

The committee should have balanced representation of REALTORS®, REALTOR ASSOCIATE®s, men, and women, and should include representatives of various racial and ethnic groups. Committee members should be mature, experienced, knowledgeable persons of a judicial temperament. It is suggested that, to the extent practical, members of the Professional Standards Committee not serve simultaneously on the Grievance Committee or on the Board of Directors to avoid conflict with the prohibition on serving on more than one (1) tribunal in the same matter. *(Revised 11/96)*

Part Nine — The Grievance Committee in Arbitration Proceedings

Section 40. Authority

The Grievance Committee is established in **Part Two,** Section 15 and **Part Eight,** Section 38 of this Manual, which provide in part:

> ✍ *There will be a standing committee, known as the Grievance Committee, of at least ________________________ Board Members in good standing, of whom at least a majority shall be* REALTORS®*. The members of the committee shall be appointed by the President, subject to confirmation by the Board of Directors, for staggered three (3) year terms. The committee shall annually select its own Chairperson and Vice Chairperson (or, alternatively, the President shall annually designate the Chairperson and Vice Chairperson of the committee).*

Section 41. Function

The function of the Grievance Committee is clearly distinguishable from the function of the Professional Standards Committee. The Professional Standards Committee makes decisions on matters involving ethics or arbitration *(Revised 05/15)*

The Grievance Committee receives ethics complaints and arbitration requests to determine if, taken as true on their face, a hearing is to be warranted. The Grievance Committee makes only such preliminary evaluation as is necessary to make these decisions. While the Grievance Committee has meetings, it does not hold hearings, does not decide whether members have violated the Code of Ethics, and does not dismiss ethics complaints because of a lack of evidence. Complainants are not required to prove their case upon submission of their ethics complaint or arbitration request. The Grievance Committee does not mediate or arbitrate business disputes. The Grievance Committee will hold regularly-scheduled meetings and/or review arbitration requests not later than forty-five (45) days after receipt of the request. *(Revised 05/15)*

In evaluating ethics complaints, the Grievance Committee may require a written response from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complaint, and the complainant cannot provide such information. In such instances the respondent(s) should be provided with a copy of the ethics complaint and advised that failure to respond may be the basis for a change of having violated Article 14 of the Code of Ethics. (See Form #E-4) Grievance Committee Request for Information [Ethics Complaint] and Form #E-5, Response to Grievance Committee Request for Information, **Part Six** of this Manual). In evaluating arbitration requests, the Grievance Committee may request a written response to the arbitration request from the respondent(s) only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, **Part Thirteen** of this Manual.) If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the arbitration request. *(Revised 11/15)*

When Grievance Committees refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about

(1) whether ethics complaints and arbitration request are timely filed,

(2) whether arbitrable issues exist

(3) whether arbitration requests are too legally complex to be fairly arbitrated, and

(4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration requests commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration request by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. *(Revised 05/14)*

Section 42. Grievance Committee's Review and Analysis of a Request for Arbitration

A. *Initial action upon receipt of a request for arbitration*

Upon receipt of a request for arbitration, the Professional Standards Administrator shall refer the arbitration request to the Chairperson of the Grievance Committee. The Chairperson shall review the arbitration request and any evidence and documentation attached. The Chairperson may assign one or more members of the Grievance Committee to review the request and to make any necessary evaluation. The member(s) may, if necessary, gather additional information on the matters complained of from the complainant if additional information appears necessary to make a knowledgeable disposition of the arbitration request. The request shall be provided to the assigned members by the Professional Standards Administrator upon instruction from the Chairperson. *(Amended 11/15)*

The reviewer(s), if appointed, shall complete the assignment promptly and prepare a report and recommendation for the

Grievance Committee. After reviewing the report, the Chairperson shall schedule a meeting of the Grievance Committee and may instruct the Professional Standards Administrator to provide members of the Grievance Committee with copies of the case file including the review's report, if any. At the option of the Board, such file may be sent to the Grievance Committee members prior to the meeting or may be distributed at the meeting. *(Amended 4/94)*

B. *Consideration by the Grievance Committee of a request for arbitration*

In reviewing a request for arbitration, the Grievance Committee shall consider the following:

(1) Is the request for arbitration acceptable in the form as received by the committee? If not in proper form, the Chairperson may request that the Professional Standards Administrator contact the complainant to advise that the request must be submitted in proper form. *(Revised 11/15)*

NOTE: if deemed appropriate by the Chairperson, a member of the Grievance Committee may be assigned to contact the complainant and to provide procedural assistance to amend the request or resubmit a new request in proper form and with proper content. The Grievance Committee member providing such assistance shall ensure that only procedural assistance is provided to the complainant, and that the complainant understands that the member is not representing the complainant or advocating on behalf of the complainant. *(Revised 11/15)*

(2) Are all necessary parties named in the request for arbitration? The duty to arbitrate is an obligation of REALTOR® principals. REALTOR® principals include sole proprietors, partners in a partnership, officers or majority shareholders of a corporation, or office managers (including branch office managers) acting on behalf of principals of a real estate firm.

(3) Was the request for arbitration filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later?

(4) Are the parties members in good standing or otherwise entitled to invoke arbitration through the Board's facilities? Were the parties members at the time the facts giving rise to the dispute occurred?

(5) Is litigation concerning an otherwise arbitrable matter pending in connection with the same transaction?

NOTE: No arbitration shall be provided on a matter pending litigation unless the litigation is withdrawn with notice to the Board and request for arbitration, or unless the court refers the matter to the Board for arbitration.

(6) Is there any reason to conclude that the Board would be unable to provide an impartial Hearing Panel?

(7) If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable, i.e., is there some basis on which an award could be based?

(8) If an arbitrable issue exists, are the parties required to arbitrate or is their participation voluntary?

(9) Is the amount in dispute too small or too large for the Board to arbitrate?

(10) Is the matter too legally complex, involving issues that the arbitrators may not be able to address in a knowledgeable way?

(11) Is there a sufficient number of knowledgeable arbitrators available?

If all of the relevant questions have been considered, and a majority of the Grievance Committee conclude that the matter is properly arbitrable by the Board, the Grievance Committee shall send the request for arbitration to the Chairperson of the Professional Standards Committee for arbitration by an arbitration Hearing Panel. Complainants are not required to prove their case when initially filing an arbitration request. An arbitration request may not be dismissed for lack of evidence if the arbitration request is otherwise arbitrable, timely filed, and the arbitration is one of the circumstances described in Section 44, Duty and Privilege to Arbitrate. *(Revised 11/15)*

C. *Appeals from the decision of the Grievance Committee related to a request for arbitration*

If the Grievance Committee determines that a matter should not be arbitrated by the Board (because of the amount involved or the legal complexity, or for any other valid reason specified in the Grievance Committee decision and written report), the reason(s) for dismissing the request will be stated in the notice of the dismissal. Any party may appeal the decision to the Board of Directors within twenty (20) days from transmittal of notice of the committee decision using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. The request for arbitration and any attachments cannot be revised, modified, or supplemented. The party appealing the dismissal may, however, explain in writing why they disagree with the Grievance Committee's conclusion that the request for arbitration should be dismissed. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. Appeals of dismissals/classifications shall be heard at the Directors' next regularly scheduled meeting or at a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision. *(Amended 11/15)*

The materials which were presented to the Grievance Committee when the Grievance Committee made its decision will be presented to the Board of Directors and considered with the appeal, together with any party's rationale challenging the Grievance Committee's dismissal. The parties to the arbitration (complainant and respondent) do not have the right to appear at the appeal hearing before the Directors. In the event a request for arbitration is dismissed, any deposit submitted by the complainant shall be returned to the complainant. *(Revised 11/12)*

Part Ten — Arbitration of Disputes

Section 43. Arbitrable Issues and Appropriate Parties

As used in Article 17 of the Code of Ethics and in **Part Ten** of this Manual, the terms "dispute" and "arbitrable matter" are defined as those contractual issues and questions, and specific non-contractual issues and questions defined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS® and between REALTORS® and their clients and customers, as specified in **Part Ten,** Section 44, Duty and Privilege to Arbitrate. *(Revised 11/96)*

A Member Board should determine through advice of legal counsel:

(1) Whether state law permits an agreement to binding arbitration in advance of a dispute or only after the dispute occurs, or

(2) If binding arbitration is not recognized and is thus unenforceable by state law. The Board's arbitration procedures must conform to applicable state law.

In 2001, Article 17 was amended by the addition of the following paragraph:

> *The obligation to participate in arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to arbitrate and be bound by any award.*

This expansion in the scope of Article 17 does not diminish the personal responsibility of REALTORS® to participate in arbitration. While Article 17 obligates REALTORS® to ". . . cause their firms to arbitrate and be bound by any award . . . ," it does not confer REALTOR® membership status on real estate firms. Membership, and the duties membership imposes including adherence to the Code of Ethics, is still personal to every REALTOR®.

The change to Article 17 enhances the dispute resolution process by increasing the availability of arbitration—and the likelihood that awards will be enforceable and paid. In many instances, the disputes giving rise to arbitration under Article 17 relate to contracts between REALTORS®' firms or between REALTORS® acting on behalf of their respective firms. Even where disputes are actually between firms, Article 17 has required that arbitration complainants and respondents be individual REALTORS® (principals), and that awards be rendered in favor of and against individual REALTORS® (principals). In some instances this requirement has resulted in unfair results or rendered the arbitration process impotent because awards were uncollectible. Examples include REALTOR® (principal) respondents leaving the association's jurisdiction, leaving the real estate business, relinquishing their status as a principal in the firm, or being insolvent or "judgment-proof."

The expansion of Article 17 does not require substantive changes to the way associations of REALTORS® conduct arbitration. It does, however, give both arbitration complainants and respondents greater latitude in determining who the parties are and how any resulting award will be made.

For example, a REALTOR® seeking to invoke arbitration could name a REALTOR® (principal) in another firm as the sole respondent; could name multiple REALTORS® (principals) in the other firm as respondents; could name a firm (comprised of REALTOR® principals) as the respondent; or could name both individual REALTORS® (principals) and their firm as respondents. In this way, the likelihood of the arbitration process being thwarted because a named respondent is no longer subject to an association's jurisdiction before, during or after the arbitration process, or an award being uncollectible, is greatly reduced.

Similarly, individual REALTOR® respondents who want either additional REALTOR® principals or their firms (or both) to be parties to the dispute can file an arbitration request against the original complainants with additional REALTORS® (principals) or the firm (or both) named as complainants. In such cases both claims would be consolidated by the Grievance Committee and all claims would be resolved in a single hearing.

In 2012, Article 17 was further amended to provide Boards with discretionary authority to require REALTOR® (principals) and their firms to mediate otherwise arbitrable disputes and be bound by any resulting agreement. Requiring REALTORS® to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in the Board's governing documents. Enabling language can be found at www.nar.realtor (see Model Bylaws). *(Adopted 11/11)*

Common questions include:

(1) If only an individual REALTOR® (principal) is named as the respondent in an arbitration request, can a Hearing Panel make an award against the respondent's firm?

No. Awards can only be made against named parties in the arbitration request and agreement.

(2) If only an individual REALTOR® (principal) is named as the complainant in an arbitration request, can a Hearing Panel make an award in favor of the complainant's firm?

No. Awards can only be made in favor of parties named in the arbitration request and agreement.

(3) If an award is made against an individual REALTOR® (principal), is it enforceable against the respondent's firm?

Awards are generally enforceable against parties named in the award.

(4) Can I name both a REALTOR® (principal) and his firm as respondents in an arbitration request?

Yes.

(5) What is the advantage to naming both a REALTOR® (principal) and his firm as respondents in an arbitration request?

Naming a REALTOR® (principal) as respondent lets the complainant know who will appear at the hearing, and naming the firm as respondent increases the chances of collecting any resulting award.

(6) If a REALTOR®'s firm is named as the respondent in an arbitration request and refuses to arbitrate, who can be named as respondent in a complaint alleging that Article 17 has been violated?

Any REALTOR® (principal) who holds membership locally or who enjoys MLS participatory rights through the association can be named as respondent.

(7) If only a REALTOR®'s firm is named as respondent in an arbitration request, who is served with notices?

Any REALTOR® (principal) in the firm may be served with notices.

(Revised 11/11)

Section 44. Duty and Privilege to Arbitrate

(a) By becoming and remaining a member and by signing or having signed the agreement to abide by the bylaws of the Board, every member, where consistent with applicable law, binds himself or herself and agrees to submit to arbitration (and to mediation if required) by the Board's facilities all disputes as defined by Article 17 of the Code of Ethics and, as set forth in the provisions of this Manual, all disputes with any other member, as defined, under the following conditions. In addition, REALTOR® principals who participate in a Board's MLS where they do not hold Board membership, or nonmember brokers and nonmember licensed or certified appraisers who participate in the Board's MLS, having signed the agreement to abide by the Board's Multiple Listing Service rules and regulations binds himself or herself and agrees to submit to arbitration by the Board's facilities. The duty to submit to arbitration continues in effect even after membership lapses or is terminated, provided that the dispute arose while the respondent was a REALTOR® or an MLS Participant. *(Amended 11/11)*

Mandatory types of arbitration

(1) Every REALTOR® of the Board who is a REALTOR® principal, every REALTOR® principal who participates in a Board's MLS where they do not hold Board membership and every nonmember broker or licensed or certified appraiser who is a Participant in the Board's MLS shall have the right to invoke the Board's arbitration facilities in any dispute arising out of the real estate business with a REALTOR® principal in another real estate firm or with that firm (or both), or nonmember broker/appraiser or their firm (or both) who is a Participant in the Board's MLS. REALTOR® nonprincipals and REALTOR ASSOCIATE®s who are affiliated with either the complainant or the respondent and have a vested financial interest in the outcome have the right to be present throughout the proceedings and to participate but are not considered to be parties. *(Amended 11/22)*

(2) A client of a REALTOR® principal may invoke the arbitration facilities of the Board in a business dispute with a REALTOR® principal or the REALTOR®'s firm (or both) arising out of an agency relationship or legally recognized non-agency relationship, provided the client agrees to be bound by the arbitration. In the event of such request and agreement the Board will arbitrate the dispute subject to the provisions of **Part Ten,** Section 45. A REALTOR® principal may also invoke arbitration against his client but no arbitration may be held without the client's voluntary agreement to arbitrate and to be bound by the decision. *(Amended 11/17)*

Voluntary types of arbitration

(3) REALTORS® and REALTOR ASSOCIATE®s who are or were affiliated with the same firm shall have the same right to invoke the arbitration facilities of the Board, provided each party voluntarily agrees to the arbitration in writing and the Board finds the matter properly subject to arbitration in accordance with the provisions of **Part Ten,** Section 45 of this Manual. This privilege as stated applies to disputes arising when the parties are or were affiliated with the same firm, irrespective of the time request is made for such arbitration. *(Amended 11/95)*

(4) A REALTOR® principal may invoke the arbitration facilities of his Board with a nonmember broker, provided each party agrees in writing to the arbitration and provided the Board finds the matter properly subject to arbitration in accordance with the provisions of **Part Ten,** Section 45 of this Manual. However, it shall be optional with the member as to whether he will submit to a claim to arbitration with a nonmember broker who is not an MLS Participant. A nonmember broker who is not an MLS Participant or nonmember salesperson may invoke the arbitration facilities of the Board of REALTORS® in cases where they believe they have an arbitrable dispute with a REALTOR®. Under these circumstances, REALTORS® are not required to agree to or participate in arbitration. *(Amended 11/12)*

(5) Business disputes between a REALTOR® principal and a customer of the REALTOR® principal may be arbitrated by the Board if a written contractual relationship has been created by a REALTOR® principal between a customer and a client and provided all parties to the dispute (i.e., the customer and the REALTOR®) agree in writing to arbitrate the dispute. *(Amended 11/95)*

(b) Where mandatory arbitration (and mediation if required by a Board) is consistent with applicable state law, the Code of Ethics, Article 17, requires only that disputes arising out of the real estate business between REALTORS® ". . . associated with different firms . . ." be arbitrated (or mediated if required by a Board). The various provisions of this Section represent the interpretations of the Professional Standards Committee with approval of the Board of Directors of the National Association as to appropriate policy of a Member Board in the matter of providing arbitration and mediation facilities by the Board. Thus, Member Boards must provide arbitration and mediation facilities for Board Members in the types of arbitration described in the preceding paragraphs (1) and (2), and a Board may require REALTORS® (principals) to mediate otherwise arbitrable matters. Member Boards may provide arbitration and mediation facilities for the additional types of disputes described in the preceding paragraphs (3), (4), and (5). However, Member Boards shall not establish any mandatory requirement of its Board Members to arbitrate and/or mediate in the circumstances described in paragraphs (3), (4), and (5). No arbitration shall be initiated by the Board and no arbitration shall be undertaken by the Board unless it determines the dispute is properly arbitrable in accordance with the provisions of **Part Ten,** Section 45 of this Manual. *(Revised 11/22)*

Section 45. Board's Right to Decline Arbitration

(a) If either the Grievance Committee or the arbitration panel selected in the manner hereinafter provided determine that because of the amount involved or the legal complexity of the dispute the dispute should not be arbitrated, the arbitration shall automatically terminate unless either of the parties to the dispute appeals the decision to terminate the proceedings to the Board of Directors in writing within twenty (20) days of the date of notice that the Grievance Committee or the arbitration panel declined to continue the proceeding using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. The request for arbitration and any attachments cannot be revised, modified, or supplemented. The party appealing the dismissal may, however, explain in writing why they disagree with the Grievance Committee's conclusion that the request for arbitration should be dismissed. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. The written appeal and those materials and information which were available to the Grievance Committee or the arbitration Hearing Panel when the decision to discontinue arbitration was made will be presented to the Directors and considered with the appeal at the Directors' next regularly scheduled meeting or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days from the date of the decision. The complainant and respondent do not have the right to appear at the hearing before the Directors. In the event of such an appeal, the Grievance Committee or the arbitration panel shall report its conclusions in writing to the Directors and, if the Directors concur, the arbitration shall terminate and the parties shall be relieved of their obligation to arbitrate. In this event, or in the case of no appeal, any deposits made by the parties shall be returned to them. However, if the Board of Directors decides that the arbitration should proceed, the matter shall be remanded to the Grievance Committee or the arbitration panel for further proceedings. *(Revised 5/15)*

(b) The President may appoint a panel of Directors, acting on behalf of the Board of Directors, to hear the appeal. Any appeal panel so appointed must be composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and not subject to further review by the Board of Directors. *(Revised 11/91)*

(c) If an otherwise arbitrable matter is the subject of civil litigation, arbitration shall not take place unless the litigation is withdrawn or referred to the Board of Directors by the court for arbitration in accordance with Article 17. In instances where the arbitration is mandatory (as defined in **Part Ten,** Section 44 of this Manual), the failure to arbitrate may result in a charge alleging violation of Article 17.

(d) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented by the request ("mandatory" or "voluntary" arbitration situation), the party has twenty (20) days from the transmittal of the Grievance Committee's decision to file a written appeal of the Grievance Committee's determination using Form #A-20, Appeal of Grievance Committee (or Hearing Panel) Dismissal or Appeal of Classification of Arbitration Request. The materials and information which were available to the Grievance Committee when the Committee made its determination will be presented to the Directors and considered with the appeal, together with any party's rationale challenging the Grievance Committee's classification of the request. Appeals of classifications shall be heard at the next regularly scheduled Directors' meeting or a special meeting designated for that purpose, but no later than ten (10) days after receipt of the appeal. The Directors' decision shall be transmitted to the parties within (5) days from the date of the decision. The complainant and respondent do not have the right to appear at the hearing before the Directors. In the event of such an appeal, the Grievance Committee must report its written conclusions to the Board of Directors. If the Directors determine that the arbitration request was incorrectly classified, they shall reclassify the request as either "mandatory" or "voluntary" arbitration and refer it to the Professional Standards Administrator for appropriate processing. *(Revised 05/15)*

Section 46. Duty to Arbitrate Before State Association

By becoming and/or remaining members of this Board, all members bind themselves and agree to submit to arbitration by the arbitration facilities of the ________ (state) Association of REALTORS® any dispute with a member of any other local Board or ________ (state) Association of REALTORS®, provided:

(1) The dispute is a dispute as defined and for which arbitration is required by Article 17 of the Code of Ethics, and

(2) The _________ (state) Association of REALTORS® has established facilities for such arbitration.*

Disputes as defined in Article 17 of the Code of Ethics requiring arbitration between members having no commonality of Board membership or MLS participation may be submitted and conducted under the procedure established in **Part Eleven** of this Manual, subject to such modification as may be required by applicable state law. Whether arbitration is conducted by the state association or by an interboard arbitration panel pursuant to **Part Eleven**, the costs charged to parties, including filing fees, may not exceed $500. Where arbitration is conducted by the state association, any costs incurred that exceed the parties' filing fees may be recouped from the parties' local association(s). *(Revised 5/06)*

The method set forth in **Part Eleven** may also be utilized for the conduct of arbitration between Board Members of different Boards of different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established by the arbitration panel thus chosen for a hearing, and to pay all costs of such arbitration as may be directed by the panel, and further subject to applicable state law of the respective states permitting such binding arbitration.

Section 47. Manner of Invoking Arbitration

(a) Any person authorized by the provisions of **Part Ten,** Section 44 of this Manual may request arbitration by the Board. A request for arbitration shall be in writing (Form #A-1 or #A-2, Request and Agreement to Arbitrate, **Part Thirteen,** or any other appropriate form permitted by law), must be signed by the complainant, must indicate the nature of the dispute and the amount in dispute, and must be accompanied by the required deposit of $________.** Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. Boards may provide mediation even if arbitration has not been requested provided the mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. *(Revised 11/00)*

Suspension of filing deadlines: If the Board's informal dispute resolution processes (e.g., ombudsmen, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to an otherwise potentially arbitrable matter that becomes the subject of a subsequent arbitration request, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when informal dispute resolution began or ended will be determined by the Board President or the President's designee. *(Adopted 11/00)*

(b) The Professional Standards Administrator shall promptly refer the request for arbitration to the Chairperson of the Grievance Committee for determination by the Committee within ____ days as to whether the matter is subject to arbitration. *(Revised 11/98)*

The function of the Grievance Committee is to make only such preliminary review and evaluation of the request for arbitration as is required to determine (1) whether the matter is properly arbitrable; (2) whether arbitration is mandatory or voluntary based upon the requirements of **Part Ten,** Section 44 of this Manual; and (3) whether the proper parties are named in the request for arbitration. The Grievance Committee does not hold hearings, does not determine entitlement to awards, and does not dismiss arbitration requests because of a lack of evidence. A complainant is not required to prove their case upon submission of their arbitration request. *(Revised 11/15)*

The Grievance Committee may request the party(ies) named as respondent(s) in the request for arbitration to provide the Grievance Committee with a written response to the request for arbitration within ______ days only if the committee is in need of additional information pertaining to the questions in Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, and the complainant cannot provide such information. (See Form #A-5, Grievance Committee Request for Information [Arbitration Request] and Form #A-6, Response to Grievance Committee Request for Information, **Part Thirteen** of this Manual.) If no response is filed within fifteen (15) days from transmittal of the request for the response, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the request for arbitration. *(Revised 11/15)*

*The State Association as a Member Board of the National Association has the obligation to establish arbitration procedures and facilities consistent with applicable state law, as required by the Constitution, National Association, Article IV, and by Article 17, Code of Ethics of the National Association, for individual members of the State Association.

**This fee should not be so high as to deter parties from arbitration. This amount shall not exceed $500. Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/96)*

(c) If the Grievance Committee finds the matter properly subject to arbitration, the Chairperson shall refer it back to the Professional Standards Administrator with instructions to arrange a hearing, notifying the parties of the Grievance Committee's decision, informing the parties as to whether the arbitration is mandatory or voluntary (and, if voluntary, of the date certain by which the respondent is requested to inform the Board of his decision) and informing the parties of their ability to challenge the classification (see Section 45[d], Board's Right to Decline Arbitration). The Professional Standards Administrator or Chairperson shall select a hearing date which will be transmitted to the parties within five (5) days of transmittal of the Grievance Committee's decision. The Professional Standards Administrator shall also notify the respondent within five (5) days of receipt of the Grievance Committee's instructions by transmitting a copy of the request for arbitration, the Notice to Respondent (Arbitration) (Form #A-3), and two (2) forms for response (Form #A-4, Response and Agreement to Arbitrate, **Part Thirteen**), with directions to complete and return the written response and deposit amount of $_________* within fifteen (15) days from the date of transmittal of the request for response to the respondent. The Professional Standards Administrator shall within five (5) days of transmittal of the Grievance Committee's decision transmit to each of the parties a list of names of members of the Professional Standards Committee (see **Part Seven,** Section 27, (a) through (f), Qualification for Tribunal; **Part Thirteen,** Form #A-7, Notice of Right to Challenge Tribunal Members; and Form #A-8, Challenge to Qualifications by Parties to Panel Members). The respondent's response and affirmative claim shall be transmitted to the complainant not later than five (5) days after receipt. Within five (5) days from the date the challenge forms are due (forms due within ten [10] days from the date the list of names was transmitted), the Professional Standards Committee Chairperson shall appoint from the names not successfully challenged by either party three (3) or more arbitrators who will hear the dispute. The Chairperson shall also select one of the panel members to serve as Chairperson of the Hearing Panel. Any Hearing Panel must have an odd number of members. At least two (2) shall be REALTORS®, and in the event a REALTOR ASSOCIATE® or REALTOR® other than a principal has invoked the arbitration through the REALTOR® principal, or is affiliated with the respondent, and has a vested interest in the outcome of the proceeding, one (1) of the arbitrators must be a REALTOR ASSOCIATE® or REALTOR® other than a principal. It shall be a membership duty of anyone so appointed to serve as an arbitrator unless disqualified. The Professional Standards Committee Chairperson shall select the Chairperson of the Hearing Panel, who shall possess the powers of the neutral arbitrator within the meaning of the _________ arbitration statutes.* A party will be deemed to have waived all objections to any person whose name he does not challenge. If challenge to members of the Professional Standards Committee results in an insufficient number of members to constitute a panel, the President may appoint other qualified Board Members to serve as panel members. No arbitration may proceed without three (3) or more arbitrators not disqualified pursuant to **Part Seven,** Section 27, Qualification for Tribunal. *(Revised 05/15)*

When Grievance Committees refer ethics complaints and arbitration requests for hearing, hearing panel chairs can determine if questions about

(1) whether ethics complaints and arbitration requests are timely filed,

(2) whether arbitrable issues exist,

(3) whether arbitration requests are too legally complex to be fairly arbitrated, and

(4) other administrative issues

will be addressed through a pre-hearing meeting of the hearing panel or at the outset of the hearing prior to testimony relating to the ethics complaint or arbitration request commencing. If these matters rise during a hearing, the hearing panel will address them at that time.

Dismissals of ethics complaints and arbitration requests by hearing panels can be appealed to the Board of Directors on the same bases as dismissals by the Grievance Committee.

Where such issues are considered at a pre-hearing meeting of the hearing panel, the chair will determine whether the parties may be present, and the extent to which their participation will be permitted. *(Revised 05/14)*

If the Grievance Committee dismisses the request as being unworthy of further consideration, the decision may be appealed to the Board of Directors within twenty (20) days from transmittal of the Grievance Committee's decision using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; however, no additional information may be added or attached to the form.** Only those materials which were presented to the Grievance Committee when the committee made its decision will be presented to the Board of Directors and considered with the appeal, and the complainant and respondent do not have the right to appear at the hearing before the Directors. The appeal shall be heard at the next regularly scheduled meeting

*This fee should not be so high as to deter parties from arbitration. This amount shall not exceed $500. Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/96)*

*As an alternative, the Board may, as a matter of Board procedure, elect to have the Board President appoint the Chairperson of each Hearing Panel.

**Any member of a Grievance Committee who is a member of the Board of Directors shall not sit as a Director during any appeal from a decision of the Grievance Committee, nor shall such individual participate in any vote of the Directors with respect to such matters.

or a special meeting designated for that purpose, but no later than ten (10) days after the date of receipt of the appeal. The Directors' decision shall be transmitted to the parties within five (5) days of the date of the decision. In the case of a dismissed arbitration request, the deposit shall be returned to the complainant. If the Directors determine that the arbitration request was improperly dismissed they shall refer it to the Professional Standards Committee for hearing. If the Directors determine that the request was improperly classified, they shall reclassify it appropriately. Upon determination of the Directors that the arbitration request should be referred for hearing, the Professional Standards Administrator shall at that time provide a copy of the response to the complainant if one had been submitted for review by the Grievance Committee. In any event, the Directors' decision shall be transmitted to the parties within five (5) days of the date of the decision. *(Revised 05/15)*

(d) Boards are required to offer mediation as a preliminary, voluntary alternative to arbitration. Where mediation is offered prior to review of an arbitration request by the Grievance Committee and one or more of the parties declines or the mediation attempt is unsuccessful, the parties will not again be offered mediation. If a party requests a second opportunity to mediate, a second mediation can be scheduled at the discretion of the Association. (See Appendix VI to **Part Ten,** Mediation as a Service of Member Boards.) *(Revised 11/03)*

(e) Dismissal of an arbitration request by a Board of REALTORS® does not prohibit REALTORS® from exercising other remedies, including litigation, that may be available to them. *(Adopted 5/99)*

Section 48. Submission to Arbitration

(a) Submission of a dispute to arbitration by the Board shall consist of signing and delivering to the Professional Standards Administrator either a request or response form provided by the Board (Form #A-1 or #A-2, Request and Agreement to Arbitrate, or Form #A-4, Response and Agreement to Arbitrate) or any similar writing permitted by law and making the appropriate deposit of $________ (not to exceed $500).* Agreements to arbitrate are irrevocable except as otherwise provided under state law. *(Revised 5/01)*

NOTE: The circumstances under which Member Boards may conduct arbitration will vary based upon state arbitration other statutes and case law. Member Boards should consult with Board or State Association legal counsel and select the appropriate procedure from those listed below as Options #1, #2, and #3. No arbitration hearing may be held in the absence of the complainant, and no award may be rendered without a hearing on the merits. *(Revised 11/91)*

In any instance where arbitration has been conducted and an award rendered under Option #2 or #3 of this Section; where the amount requested by the party initiating the arbitration has been awarded; and where the respondent has failed to make the specified deposit, it shall be the responsibility of the respondent to pay an amount equal to the deposit to the Board within ten (10) days of transmittal of notice from the Board requesting payment. Where the respondent has not made the deposit and a partial award is made, the respondent shall pay to the Board an amount to be determined by the Hearing Panel that will not exceed the deposit originally made by the complainant. Failure to make such payment on a timely basis, upon receipt of a request from the Board, shall be treated in the manner specified in the Board's bylaws for failure to satisfy financial obligations to the Board. *(Adopted 5/88)*

Option #1

(b) Arbitration shall not proceed unless the signed Response and Agreement Form (**Part Thirteen,** Form #A-4) and deposit amount have been received from the respondent and the respondent appears and takes part in the hearing *(Revised 11/05)*.

Option #2

(b) In the event the respondent fails to sign and return the Response and Agreement Form (**Part Thirteen,** Form #A-4), or fails or refuses to make the required deposit, arbitration may proceed, and a valid award may be rendered if the respondent appears and takes part in the hearing.

NOTE: This option may be adopted only where state law permits arbitration to proceed in the absence of signed arbitration agreements. The advice of legal counsel should be obtained to determine whether Board membership creates an enforceable obligation to arbitrate under the circumstances established in **Part Ten,** Section 44 of this Manual.

Option #3

(b) In the event the respondent fails or refuses to sign the Response and Agreement Form (**Part Thirteen,** Form #A-4), fails or refuses to make the required deposit, or fails or refuses to take part in the arbitration hearing, the arbitration hearing may be scheduled and conducted in the absence of the respondent.

NOTE: Arbitration in the absence of a respondent may take place only where permitted by state statute or case law. In such instances, the Board should ensure that all preliminary procedural steps, including the provision of adequate prior notice, are complied with. In the event a respondent fails to appear, it is strongly recommended that an attempt be made to determine whether the

*Where a party(ies) from the same firm is involved in more than one related request for arbitration, and the claims will be consolidated and resolved in a single hearing, no more than one deposit or filing fee may be required of that party(ies). When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/93)* failure to appear is because of the respondent's refusal to arbitrate or due to unforeseen circumstances. *(Revised 11/91)*

Where arbitration takes place in a respondent's absence, the respondent is still entitled to be represented by legal counsel. Counsel may make opening and closing statements; call witnesses; cross-examine witnesses called by other parties; and introduce affidavits, documents, and other admissible relevant evidence. Counsel may not testify to events and facts of which counsel has no firsthand knowledge. Hearing Panels should be instructed by the Chair that counsel's arguments do not constitute testimony. *(Adopted 11/98)*

Associations are encouraged, but not required, to refund part or all of the parties' deposits in cases where disputes are resolved through mediation. Associations are also encouraged to adopt and follow a consistent policy regarding the disposition of arbitration deposits. *(Adopted 5/10)*

Section 49. Initial Action by Directors

If the complainant alleges that a member has improperly refused to submit a dispute to arbitration (or mediation if required by the Board), the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors at the next regular meeting or at a special meeting called by the President for that purpose. The procedures for notices, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent has failed to submit an arbitrable matter to arbitration or mediation in violation of Article 17. *(Revised 11/11)*

There can be no charge that there has been a refusal to arbitrate (or mediate if required by the Board) until the Grievance Committee determines the matter is arbitrable and of a mandatory nature and the respondent fails to submit to arbitration or mediation before the Board. *(Revised 11/11)*

✍ Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 11/11)*

On the other hand, if the complaint against the member is that, having properly submitted a dispute to arbitration or mediation, the member has refused to abide by the award or the resulting agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate or mediate. A refusal to abide by an award in arbitration or any resulting agreement in mediation should be enforced in the manner set forth in **Part Ten,** Section 56, Enforcement.* *(Revised 11/11)*

Section 50. Preliminary Judicial Determination Prior to Imposition of Discipline

If the Board of Directors has reason to believe that the imposition of a proposed sanction will become the basis of litigation and a claim for damages, it may specify that the discipline shall become effective upon entry of the final judgment of a court ✍ of competent jurisdiction in a suit by the Board for declaratory relief declaring that the discipline proposed violates no rights of the member.**

Section 51. Arbitration Hearing

(a) Not later than five (5) days after receipt of the response and affirmative claim, the Professional Standards Administrator shall transmit to the complainant a copy of the response and respondent's affirmative claim, if any. *(Revised 11/15)*

In the case of an arbitration request involving issues related to areas of the real estate business such as commercial, investment, industrial, etc., where there is an insufficient number of qualified practitioners on the Board's Professional Standards Committee to provide a representative peer panel, the Board President shall appoint other Board Members qualified in that field to serve as panel members. If the Board President is unable to identify a sufficient number of qualified members to serve on a panel, the President shall report that fact to the Directors at their next regularly scheduled meeting. If the Board of Directors concurs, the request shall be referred to the State Association pursuant to **Part Fourteen** of this Manual. If the State Association is unable to provide a representative peer panel, the parties shall be released from their obligation to arbitrate. *(Revised 11/98)*

(b) The Professional Standards Administrator shall inform the parties of the date, time, and place of the hearing established by the arbitrators (or the Chairperson of the Professional Standards Committee) (Form #A-9, Official Notice of Hearing, **Part Thirteen**).*** The arbitration request and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be ______ (as determined by the Board of Directors) and shall be adhered to for all hearings. Board's conducting arbitration must also provide all parties and panel members with the Arbitration Guidelines prior to commencement of any arbitration hearing (including the Arbitration Work Sheet). The parties shall be given at least twenty-one (21) days' prior notice of the hearing, but appearance at a hearing without objection by a party will constitute a waiver of any defective notice of the hearing. The arbitrators may recess the hearing from

*Refer to Appendix III to **Part Ten** for the rationale for use of judicial enforcement of arbitration awards when a Board Member refuses to pay an award in arbitration.

Refer to Rationale of Declaratory Relief Procedure provided in Appendix IV to **Part Four.

***Form #A-10, Outline of Procedure for Arbitration Hearing, **Part Thirteen,** should accompany the notice of the hearing or be otherwise provided to the parties prior to the hearing.

time to time as necessary. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the request for continuance would deny the requestor a fair hearing. *(Revised 11/14)*

(c) Upon notice by the Professional Standards Administrator, the parties to the dispute shall with diligence present to the arbitrators in writing such statements and proof which they deem necessary to support their claims. Proof may be submitted in the form of affidavits or otherwise. The Hearing Panel of arbitrators may require that statements be verified by affidavits or that accuracy or authenticity of any documents or other papers submitted be verified by affidavit. At the hearing, the arbitrators shall receive any further written statements, documents, or other papers, shall hear oral testimony and determine what personal appearances shall be made by the parties, and shall regulate the holding of hearings.* The Hearing Panel may receive and consider any evidence they deem material and proper, including evidence of accountants and other experts. Each party is responsible for the expenses of expert witnesses he calls. Parties to arbitration shall be entitled to have legal counsel present at any hearing. Each party is responsible for the expenses of his respective counsel.

Section 52. Settlement

The parties to an arbitration may settle the issue between them by agreement at any time. In such event, upon notification to the Professional Standards Administrator, the arbitration proceedings shall be terminated and the termination shall be recorded in the file.

A portion of each party's deposit may be retained by the Board to cover the costs incurred by the Board up to the point of settlement of the dispute.

Section 53. The Award

(a) The award of the arbitrators (Form #A-12, Award of Arbitrators, **Part Thirteen**) shall be made the day of the hearing, or no later than forty eight (48) hours following the conclusion of the hearing. The award shall be in writing and signed by the arbitrators or a majority of them, shall state only the amount of the award, and, when so signed and transmitted to each of the parties, shall be valid and binding and shall not be subject to review or appeal. The award shall be transmitted to the parties within five (5) days after the award is reduced to writing. Any award rendered may not be greater than the amount in dispute, may not include punitive damages, may not include attorney's fees unless expressly provided for in the agreement giving rise to the dispute, and may not include interest unless called for in the arbitration agreement and permitted by state law. Notwithstanding the foregoing, a party to an arbitration proceeding may appeal to the Board of Directors only with respect to such alleged irregularities occurring in the conduct of the proceeding as may have deprived the party of fundamental "due process." *(Revised 05/15)*

(b) If an award has been rendered, the non-prevailing party must, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors. *(Revised 05/15)*

(c) After the award has been transmitted to each of the parties, they have twenty (20) days to request procedural review of the arbitration hearing procedure by the Board of Directors. The non-prevailing party shall also have the same twenty (20) days following transmittal of the award to notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated. *(Revised 05/15)*

If no such procedural review is requested, the award becomes final and binding following the twenty (20) day period. However, if procedural review is requested, the award is not considered final and binding until after the Board of Directors has concluded that the hearing was conducted in a manner consistent with the Board's procedures and the parties had been afforded due process. *(Revised 05/15)*

(d) If a request for procedural review of the arbitration procedure is received within twenty (20) days, the funds deposited shall be retained in the escrow or trust account until the review is completed. If the arbitration award is confirmed by the Board of Directors following the conduct of the limited procedural review, the nonprevailing party shall have an additional fifteen (15) days from the transmittal of the Directors' decision to institute an appropriate legal challenge to the validity of the arbitration award. In such case, the nonprevailing party shall also cause legal counsel to advise the Board in writing that a suit challenging the validity of the arbitration award has been filed during this additional fifteen (15) day period. After fifteen (15) days from the transmittal of the Directors' decision, if written notice of a suit challenging the validity of the arbitration award has not been received by the Board, the funds shall be released from the escrow or trust account and paid to the prevailing party. If written notification is received during the fifteen (15) day period, the funds will be held in the escrow or trust account pending the determination of the matter by a court of competent jurisdiction. *(Revised 05/15)*

If the nonprevailing party does not request the Board to conduct a procedural review of the arbitration hearing process during the twenty (20) day period following transmittal of the award, then written notification that a legal challenge has been instituted must be received within the twenty (20) days following transmittal of the award. Failure to provide written notification that a suit challenging the validity of the award has been filed within twenty (20) days following transmittal of the award will result in the award being paid from the escrow or trust account to the prevailing party. *(Revised 05/15)*

*Such hearings should be conducted according to **Part Twelve,** Conduct of an Arbitration Hearing.

(e) Any failure to make the necessary deposits shall be referred to the Board of Directors for action at their next meeting or at a special meeting called for that purpose. The party failing to make the deposit on a timely basis shall be advised of the date, time, and place of the meeting and shall have an opportunity to explain why the required deposits were not made on a timely basis. The Board of Directors may, at its discretion, impose discipline or may give the party an additional period to make the required deposits. The Directors may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Directors. *(Revised 05/15)*

(f) Any interest accrued on the escrowed funds shall become the property of the party to whom the funds are ultimately released. *(Revised 05/15)*

NOTE: Escrowing of arbitration awards to secure timely payment as addressed in Section 53 (b-c) is not required in states where escrowing awards by associations is prohibitively expensive, and where the state association recommends alternative aggressive and cost-effective enforcement procedures that maximize enforcement/payment under state law, and local associations adopt those procedures, provided that nothing in those procedures is prohibited by National Association policy. *(Adopted 05/15)*

Section 54. Costs of Arbitration

The deposits of the parties shall be used by the Professional Standards Administrator to cover the costs of arbitration as it may be required. Any portion not used specifically to cover the costs of the arbitration shall go into the general operating funds of the Board of REALTORS®.* When a REALTOR® requests arbitration to determine which of multiple respondents is entitled to disputed funds, or where a party makes no claim to the disputed funds, that party may not be assessed an arbitration filing fee. *(Revised 11/95)*

✍ NOTE: At the option of each Member Board procedures providing for alternative disposition of arbitration deposits may be adopted. These can include returning the deposit to any prevailing party or returning a portion of the deposit to each party should the award rendered be an amount other than that requested by any of the parties. In any instance where return of part or all of any party's deposit is involved, disposition of such deposits shall be determined by the arbitrators. *(Adopted 11/95)*

✍ NOTE: Associations are strongly encouraged to refund all or part of parties' filing deposits where disputes are resolved through mediation. If an association elects to adopt this optional procedure, the following should be incorporated as part of the association's dispute resolution procedures:

"Where parties successfully mediate an otherwise arbitrable dispute, their arbitration filing fees will be refunded," **or** "Where parties successfully mediate an otherwise arbitrable dispute ________% (or $ ________) of their filing fee will be refunded." *(Adopted 5/10)*

If parties settle the dispute after the hearing begins but before the executive session begins, determine the disposition of the arbitration deposit. *(Adopted 11/16)* ✍

Section 55. Request for Procedural Review by Directors

(a) A written request for procedural review of the arbitration hearing procedures must be filed with the President within twenty (20) days after the award has been transmitted to the parties and be accompanied by a deposit in the sum of $______ (not to exceed $500). The request for procedural review should cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process (e.g., fraud, coercion, bias, prejudice, evident partiality, etc.) on the part of Hearing Panel members or others acting on behalf of the Board. The request for procedural review shall be reviewed within ten (10) days of receipt of the request by the Board President or the President's designee only for the purpose of determining whether the request states any legitimate basis for consideration by the Board of Directors. If determined to be insufficient, it shall be returned to the requester accompanied by an explanation and a request for additional detail to be received by the Board within ten (10) days of notice. This initial administrative review is not a decision on the merits of the request for procedural review but is intended only to ensure compliance with the requirement that the request cite the alleged procedural deficiency or irregularity on which the request is based and which will be presented to the Board of Directors for its consideration. All requests for procedural review received by the Board must be considered by the Board of Directors, and only the bases raised in the written request for procedural review may be raised during the review before the Directors. *(Amended 11/15)* ✍

(b) When a request for procedural review (as originally filed if in proper form, or as originally filed if no amendment is submitted, or as amended even if still deemed to be lacking) is received, the Professional Standards Administrator shall within one (1) day of receipt of the request or within one (1) day of receipt of additional detail, if provided or the date that the period to provide additional detail has elapsed, send a copy to the other party, notify all parties of the time and place of the review hearing by the Directors at least ten (10) days in advance (including challenge Forms #A-7 and #A-8, **Part Thirteen** of this Manual), and bring the matter before the Directors for review at their next regular meeting or at a special meeting called by the Professional Standards Administrator for that purpose, but not later than thirty (30) days after the date of receipt of the procedural review. The Professional Standards Administrator shall provide to the Directors, in advance, a copy of the request for procedural review or the amended request for procedural

*In cases of arbitration not mandated by the Board, and in which the Board provides arbitration as a service to the parties voluntarily seeking arbitration, the Board may recover its legal fees as it deems appropriate.

review, if any, and the President's correspondence, if any. The Directors shall be advised that the information provided is confidential and not to be discussed with others at any time. *(Revised 05/15)*

✍ (c) The request for procedural review may be heard by a panel of Directors appointed by the President for that purpose (or, alternatively, by the Board's Executive Committee). Five (5) Directors or a quorum of the Board of Directors, whichever is less, shall constitute such panel, which shall act on behalf of the Board of Directors. The decision of the panel (or Executive Committee) shall be final and binding and shall not be subject to further review by the Board of Directors. *(Revised 11/91)*

(d) At the procedural review hearing, the party filing the request will have an opportunity to explain the bases on which the party is requesting that the award of the arbitrators be overturned. The Chairperson of the arbitration panel (or the Chairperson's designee) will have an opportunity to respond to the allegations. The other party shall have the opportunity to present to the Directors reasons why the arbitration Hearing Panel's award should not be overturned. *(Revised 5/09)*

(e) The Board of Directors shall not hear an appeal with respect to the merits of an arbitration award, and shall not, on appeal, review such evidence offered with respect to the merits of that award, except as such evidence may bear upon a claim of deprivation of due process. The Directors shall transmit their decision within five (5) days from the date of the procedural review hearing. This decision may be to adopt the award of the arbitrators or to overturn the award based on a substantial procedural error in the arbitration hearing process that resulted in a denial of due process or on a determination that the member was otherwise deprived of due process. *(Revised 05/15)*

(f) If the Directors determine that a substantial procedural error occurred or a member was otherwise deprived of due process, the Directors shall invalidate the original arbitration award and direct that the matter be referred to the Professional Standards Committee for a hearing on the merits before a different Hearing Panel, or, alternatively, the Directors may release the parties from their obligation to arbitrate if the Directors conclude that the Board will be unable to impanel an impartial Hearing Panel.

(g) After all procedural remedies provided for in the Board's procedures have been exhausted, a member is not precluded from asserting any legal rights to which he is entitled. Assertion of such legal rights in the courts does not violate Article 17 of the Code of Ethics. The exercise of such legal rights by a member would result in judicial review similar to that set forth in **Part Ten,** Section 56 of this Manual. Section 56 recommends that, in instances where a member fails to comply with an award, the award recipient seek judicial enforcement, which results in judicial review, and, absent any showing of deprivation of due process, the judicial review will generally affirm the award rendered through the arbitration process and will enable the recipient to have it enforced. *(Revised 11/88)*

Section 56. Enforcement

The judgment of any competent court of record in ________ ✍ (state), state or federal, may be rendered upon the award. If a member fails to comply with an award or the terms of a mediated settlement agreement, the recipient to whom the award has been rendered by the arbitration panel or the beneficiary of a settlement agreement reached by the parties in mediation shall be advised by the Board to seek judicial enforcement and to request reimbursement of legal fees incurred in seeking enforcement. At the discretion of the Board of Directors, the Board may support the request for judicial enforcement in the court, and at its further discretion, the Board may reimburse the individual for costs incurred in seeking such judicial enforcement if the court does not grant reimbursement of legal costs to the plaintiff. *(Revised 11/14)*

Appendix I to Part Ten

Arbitrable Issues

Article 17 of the Code of Ethics provides:

In the event of contractual disputes or specific non-contractual disputes as defined in Standard of Practice 17-4 between REALTORS® (principals) associated with different firms, arising out of their relationship as REALTORS®, the REALTORS® shall mediate the dispute if the Board requires its members to mediate. If the dispute is not resolved through mediation, or if mediation is not required, REALTORS® shall submit the dispute to arbitration in accordance with the policies of the Board rather than litigate the matter.

In the event clients of REALTORS® wish to mediate or arbitrate contractual disputes arising out of real estate transactions, REALTORS® shall mediate or arbitrate those disputes in accordance with the policies of the Board, provided the clients agree to be bound by any resulting agreement or award.

The obligation to participate in mediation and arbitration contemplated by this Article includes the obligation of REALTORS® (principals) to cause their firms to mediate and arbitrate and be bound by any resulting agreement or award. (Amended 1/12)

Part Ten, Section 43, Arbitrable Issues, in this Manual provides in part:

*As used in Article 17 of the Code of Ethics and in **Part Ten** of this Manual, the terms "dispute" and "arbitrable matter" refer to contractual issues and questions, and certain specific non-contractual issues and questions outlined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions, that arise out of the business relationships between REALTORS®, and between REALTORS® and their clients and customers, as specified in **Part Ten,** Section 44, Duty and Privilege to Arbitrate.* (Revised 11/96)

Part Nine, Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, provides, in part, in subsection (b):

If the facts alleged in the request for arbitration were taken as true on their face, is the matter at issue related to a real estate transaction and is it properly arbitrable — i.e., is there some basis on which an award could be based?

Despite the guidance provided in the above-referenced sections of the *Code of Ethics and Arbitration Manual,* questions continue to arise as to what constitutes an arbitrable issue, who are the appropriate parties to arbitration requests, etc. To provide guidance to Board Grievance Committees in their review of arbitration requests, the Professional Standards Committee of the National Association provides the following information.

Arbitration by Boards of REALTORS® is a process authorized by law in virtually every state. Arbitration is an economical, efficient, and expeditious alternative to civil litigation. Jurists, including the former U.S. Supreme Court Chief Justice Warren Burger, have endorsed arbitration as a method of reducing the litigation backlog in the civil courts.

To conduct arbitration hearings, Boards of REALTORS®, acting through their Grievance Committees and Professional Standards Committees, must have a clear understanding of what constitutes an arbitrable issue. An arbitrable issue includes a contractual question arising out of a transaction between parties to a contract in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Many arbitrations conducted by Boards of REALTORS® involve entitlement to compensation offered by listing brokers through a multiple listing service or otherwise to cooperating brokers acting as subagents, as agents of purchasers, or in some other recognized agency or non-agency capacity. Frequently, at closing, the listing broker will be paid out of the proceeds of the sale and will direct that a disbursement be made to the cooperating broker who the listing broker believes was the procuring cause of the sale. Subsequently, another broker who may have been previously involved in the transaction will file an arbitration request claiming to have been the procuring cause of sale, and the question arises as to who is the proper respondent. *(Revised 11/96)*

In our example, assume that the listing broker is Broker A, the cooperating broker who was paid is Broker B, and the cooperating broker who was not paid, but who claims to be the procuring cause of sale, is Broker C. It is not unusual for arbitration requests filed by one cooperating broker to name another cooperating broker as the respondent. This is based on the assumption that the monies the listing broker paid to Broker B are unique and that the listing broker's obligation to compensate any other broker is extinguished by the payment to Broker B, irrespective of whether Broker B was the procuring cause of sale or not. However, the mere fact that the listing broker paid Broker B in error does not diminish or extinguish the listing broker's obligation to compensate Broker C if a Hearing Panel determines that Broker C was, in fact, the procuring cause of sale. *(Revised 11/96)*

Does this mean that a listing broker is always potentially obligated to pay multiple commissions if a property was shown by more than one cooperating broker? Not necessarily. When faced with Broker C's arbitration request, the listing broker could have initiated arbitration against Broker B, requesting that the Hearing Panel consider and resolve all of the competing claims arising from the transaction at the same time. Professional Standards Policy Statement 27, Consolidation of arbitration claims arising out of the same transaction, provides:

When reviewing requests for arbitration, Grievance Committees should try to ensure that all appropriate parties are named as complainants or respondents. If it appears that there may *be related claims involving other parties arising out of the same facts, the Grievance Committee may suggest to either the complainant or respondent (or both) that they may wish to request arbitration with additional respondents or third-party respondents so that all related claims may be resolved through a single arbitration hearing. Upon motion by either the complainant or the respondent, an arbitration request may be amended to include any additional appropriate parties, or separate arbitration requests may be filed naming additional parties, so that all related claims arising out of the same transaction can be resolved at the same time.* (Revised 11/92)

A listing broker may realize, prior to the closing of a transaction, that there may be more than one cooperating broker claiming compensation as the procuring cause of sale. In such instances, to avoid potential liability for multiple compensation claims, the listing broker, after the transaction has closed, can initiate an arbitration request naming all of the potential claimants (cooperating brokers) as respondents. In this way, all of the potential competing claims that might arise can be resolved through a single arbitration hearing. *(Revised 11/96)*

There is also an alternative avenue of arbitration available to REALTORS® involved in disputes arising out of cooperative real estate transactions. Standard of Practice 17-4 recognizes that in some situations where a cooperating broker claims entitlement to compensation arising out of a cooperative transaction, a listing broker will already have compensated another cooperating broker or may have reduced the commission payable under a listing contract because a cooperating broker has expressly sought and/or chosen to accept compensation from another source, e.g., the seller, the purchaser, etc. Under the circumstances specified in Standard of Practice 17-4, the cooperating brokers may arbitrate between themselves without naming the listing broker as a party. If this is done, all claims between the parties, and claims they might otherwise have against the listing broker, are extinguished by the award of the arbitrators. Similarly, Standard of Practice 17-4 also provides for arbitration between brokers in cases where two (or more) brokers each have open listings and each claims to have procured the purchaser. Since the determiner of entitlement to a commission under an open listing is generally production of the purchaser, arbitration between the two (or more) "open" listing brokers resolves their claims against the seller. This open listing scenario is to be distinguished from the situation in which two (or more) listing brokers each have exclusive listings and each claim entitlement to a commission pursuant to their respective listing agreements. Because exclusive listing agreements generally provide for payment of a commission if the listed property is sold—whether through the listing broker's efforts or not—each listing broker could have a legitimate, enforceable right to a commission from their client. Thus, Standard of Practice 17-4 does not obligate listing brokers to arbitrate between themselves when both (or all) have independent claims to commissions based on their respective exclusive listing agreements. *(Amended 5/02)*

In reviewing requests for arbitration, it is important that Grievance Committees not take actions that could be construed as rendering decisions on the merits. For example, a Grievance Committee should not dismiss an otherwise arbitrable claim simply because Grievance Committee members believe the respondent would undoubtedly prevail in a hearing. On the other hand, an arbitration request that cites no factual basis on which a Hearing Panel could conceivably base an award should not be referred for hearing. A party requesting arbitration must clearly articulate, in the request for arbitration, facts that demonstrate a contractual relationship between the complainant and the respondent, or a relationship described in Standard of Practice 17-4, and an issue that could be the basis on which an arbitration award could be founded. *(Revised 11/96)*

Another question that frequently arises with respect to arbitration requests is whether the fact that the listing broker was paid out of the proceeds of the closing is determinative of whether a dispute will be considered by a Hearing Panel. Initially, it should be noted that the Arbitration Guidelines (Appendix II to **Part Ten**) provide that an arbitrable issue involving procuring cause requires that there have been a "successful transaction." A "successful transaction" is defined as "a sale that closes or a lease that is executed." Some argue that if the listing broker is not paid, or if the listing broker waives entitlement to the commission established in the listing contract, then there is nothing to pay to the cooperating broker and, thus, no issue that can be arbitrated. This is an improper analysis of the issue. While the listing broker needs the consent of the seller/client to appoint subagents and to compensate subagents, buyer agents, or brokers acting in some other recognized agency or non-agency capacity, the offer to compensate such individuals, whether made through the multiple listing service or otherwise, results in a separate contractual relationship accepted through performance by the cooperating broker. Thus, if the cooperating broker performs on the terms and conditions established by the listing broker, the fact that the listing broker finds it difficult to be paid or, alternatively, waives the right to be paid, has no bearing on whether the matter can be arbitrated but may have a direct impact on the outcome. Many cooperative relationships are established through MLS and the definition of the MLS provides, in part: *(Revised 11/97)*

While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional, a listing broker's obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such*

*Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender. Refer to **Part One**, G. Commission/Cooperative Compensation Offers, Section 1, Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of a Board of REALTORS®, *Handbook on Multiple Listing Policy. (Adopted 11/98)* *instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid.* (Amended 11/98)

Still another common question is whether a REALTOR® (often a cooperating broker with an arguably-arbitrable claim) can thwart the process by remaining silent for one hundred eighty (180) days and then bringing a lawsuit against another REALTOR® (often the listing broker). As noted previously, arbitration requests must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. REALTORS® cannot reasonably be expected to request arbitration in circumstances where they have no reason to know that a dispute with another broker or firm even exists. Under these circumstances, a listing broker with no prior knowledge of a dispute would have one hundred eighty (180) days from receipt of notice of a lawsuit to invoke arbitration with the other broker. *(Adopted 11/13)*

The foregoing are by no means all-inclusive of the consideration that must be taken into account by a Grievance Committee in determining whether a matter will be arbitrated. However, they are some of the common questions raised with respect to arbitrable issues, and this discussion is provided to assist Grievance Committees in their important role in evaluating arbitration requests. *(Adopted 4/91)*

Non-Arbitrable Issues that Can be Mediated as a Matter of Local Determination

As stated above, an arbitrable issue includes a contractual question arising out of a transaction between parties to a contract, in addition to certain specified non-contractual issues set forth in Standard of Practice 17-4. Arbitration proceedings should be limited to these issues, and Boards of REALTORS® should not arbitrate other types of claims. Examples of non-arbitrable issues include:

- tortious interference with business relationships
- tortious interference with a contractual relationship
- economic duress
- intentional infliction of emotional distress
- other tort claims, such as libel/slander
- employment claims, other than commission disputes
- fraud/misrepresentation claims
- property claims, both real and personal
- Disputes between two listing brokers where no contract exists between the parties and the dispute is not as specified in Standard of Practice 17-4(4)

In addition, Section 53 of the *Code of Ethics and Arbitration Manual* limits the award in an arbitration proceeding to the amount in dispute and so an arbitration award will not include punitive damages, attorney's fees, or interest, unless the agreement between the parties specifically provides for such damages and the award is permitted by state law.

Associations may, but are not required to, provide mediation ✍ services for disputes of the type listed above. *(Revised 11/16)*

Appendix II to Part Ten

Arbitration Guidelines
(Suggested Factors for Consideration by a Hearing Panel in Arbitration)

A key element in the practice of real estate is the contract. Experienced practitioners quickly become conversant with the elements of contract formation. Inquiry, invitation, offer, counteroffer, contingency, waiver, acceptance, rejection, execution, breach, rescission, reformation, and other words of art become integral parts of the broker's vocabulary.

Given the significant degree to which Article 3's mandate for cooperation — coupled with everyday practicality, feasibility, and expediency— make cooperative transactions facts of life, it quickly becomes apparent that in virtually every real estate transaction there are actually several contracts which come into play. Setting aside ancillary but still important contracts for things such as mortgages, appraisals, inspections, title insurance, etc., in a typical residential transaction (and the same will be true in many commercial transactions as well) there are at least three (and often four) contracts involved, and each, while established independently of the others, soon appears to be inextricably intertwined with the others.

First, there is the listing contract between the seller and the listing broker. This contract creates the relationship between these parties, establishes the duties of each and the terms under which the listing broker will be deemed to have earned a commission, and frequently will authorize the listing broker to cooperate with or compensate (or both) cooperating brokers who may be subagents, buyer agents, or acting in some other capacity.

Second, there is the contract between the listing broker and cooperating brokers. While this may be created through an offer published through a multiple listing service or through some other method of formalized cooperative effort, it need not be. Unlike the bilateral listing contract (where generally the seller agrees to pay a commission in return for the listing broker's production of a ready, willing, and able purchaser), the contract between the listing broker and the cooperating broker is unilateral in nature. This simply means that the listing broker determines the terms and conditions of the offer to potential cooperating brokers (and this offer may vary as to different potential cooperating brokers or as to cooperating brokers in different categories). This type of contract differs from a bilateral contract also in that there is no contract formed between the listing broker and the potential cooperating brokers upon receipt of the listing broker's offer. The contract is formed only when accepted by the cooperating broker, and acceptance occurs only through performance as the procuring cause of the successful transaction. *(Revised 11/97)*

Third, there is the purchase contract— sometimes referred to as the purchase and sale agreement. This bilateral contract between the seller and the buyer establishes their respective promises and obligations to each other, which may also impact on third parties. The fact that someone other than the seller or buyer is referenced in the purchase contract does not make him/her a party to that contract, though it may create rights or entitlements which may be enforceable against a party (the buyer or seller).

Fourth, there may be a buyer-broker agreement in effect between the purchaser and a broker. Similar in many ways to the listing contract, this bilateral contract establishes the duties of the purchaser and the broker as well as the terms and conditions of the broker's compensation.

These contracts are similar in that they are created through offer and acceptance. They vary in that acceptance of a bilateral contract is through a reciprocal promise (e.g., the purchaser's promise to pay the agreed price in return for the seller's promise to convey good title), while acceptance of a unilateral contract is through performance (e.g., in producing or procuring a ready, willing, and able purchaser).

Each of these contracts is subject to similar hazards in formation and afterward. The maker's (offeror's) offer in any of these scenarios may be accepted or rejected. The intended recipient of the offer (or offeree) may counteroffer. There may be questions as to whether a contract was formed — e.g., was there an offer, was it accepted, was the acceptance on the terms and conditions specified by the maker of the offer— or was the "acceptance" actually a counteroffer (which, by definition, rejects the first offer). A contract, once formed, may be breached. These and other questions of contract formation arise on a daily basis. There are several methods by which contractual questions (or "issues" or "disputes") are resolved. These include civil lawsuits, arbitration, and mediation.

Another key contract is the one entered into when a real estate professional joins a local Board of REALTORS® and becomes a REALTOR®. In return for the many benefits of membership, a REALTOR® promises to abide by the duties of membership including strict adherence to the Code of Ethics. Among the Code's duties is the obligation to arbitrate, established in Article 17. Article 17 is interpreted through five Standards of Practice among which is Standard of Practice 17-4 which enumerates four situations under which REALTORS® agree to arbitrate specified non-contractual disputes. *(Adopted 11/96)*

Boards and Associations of REALTORS® provide arbitration to resolve contractual issues and questions and specific non-contractual issues and questions that arise between members, between members and their clients, and, in some cases, between parties to a transaction brought about through the efforts of REALTORS®. Disputes arising out of any of the five above-referenced contractual relationships may be arbitrated, and the rules and procedures of Boards and Associations of REALTORS® require that certain types of disputes must be arbitrated if either party so requests. (Information on "mandatory" and "voluntary" arbitration is found elsewhere in the *Code of Ethics and Arbitration Manual*.) *(Revised 11/96)*

While issues between REALTORS® and their clients — e.g., listing broker/seller (or landlord) or buyer broker/buyer (or tenant) — are subject to mandatory arbitration (subject to the client's agreement to arbitrate), and issues between sellers and buyers may be arbitrated at their mutual agreement, in many cases such issues are resolved in the courts or in other alternative dispute resolution forums (which may also be administered by Boards or Associations of REALTORS®). The majority of arbitration hearings conducted by Boards and Associations involve questions of contracts between REALTORS®, most frequently between listing and cooperating brokers, or between two or more cooperating brokers. These generally involve questions of procuring cause, where the panel is called on to determine which of the contesting parties is entitled to the funds in dispute. While awards are generally for the full amount in question (which may be required by state law), in exceptional cases, awards may be split between the parties (again, except where prohibited by state law). Split awards are the exception rather than the rule and should be utilized only when Hearing Panels determine that the transaction would have resulted only through the combined efforts of both parties. It should also be considered that questions of representation and entitlement to compensation are separate issues. *(Revised 11/98)*

In the mid-1970s, the NATIONAL ASSOCIATION OF REALTORS® established the Arbitration Guidelines to assist Boards and Associations in reaching fair and equitable decisions in arbitration; to prevent the establishment of any one, single rule or standard by which arbitrable issues would be decided; and to ensure that arbitrable questions would be decided by knowledgeable panels taking into careful consideration all relevant facts and circumstances.

The Arbitration Guidelines have served the industry well for nearly two decades. But, as broker-to-broker cooperation has increasingly involved contracts between listing brokers and buyer brokers and between listing brokers and brokers acting in nonagency capacities, the time came to update the Guidelines so they remained relevant and useful. It is to this end that the following is intended.

Procuring Cause

As discussed earlier, one type of contract frequently entered into by REALTORS® is the listing contract between sellers and listing brokers. Procuring cause disputes between sellers and listing brokers are often decided in court. The reasoning relied on by the courts in resolving such claims is articulated in *Black's Law Dictionary,* Fifth Edition, definition of procuring cause:

> *The proximate cause; the cause originating a series of events which, without break in their continuity, result in the accomplishment of the prime object. The inducing cause; the direct or proximate cause. Substantially synonymous with "efficient cause."*
>
> *A broker will be regarded as the "procuring cause" of a sale, so as to be entitled to commission, if his efforts are the foundation on which the negotiations resulting in a sale are begun. A cause originating a series of events which, without break in their continuity, result in accomplishment of prime objective of the employment of the broker who is producing a purchaser ready, willing, and able to buy real estate on the owner's terms.* Mohamed v. Robbins, 23 Ariz. App. 195, 531 p.2d 928, 930.
>
> *See also Producing cause; Proximate cause.*

Disputes concerning the contracts between listing brokers and cooperating brokers, however, are addressed by the National Association's Arbitration Guidelines promulgated pursuant to Article 17 of the Code of Ethics. While guidance can be taken from judicial determinations of disputes between sellers and listing brokers, procuring cause disputes between listing and cooperating brokers, or between two cooperating brokers, can be resolved based on similar though not identical principles. While a number of definitions of procuring cause exist, and a myriad of factors may ultimately enter into any determination of procuring cause, for purposes of arbitration conducted by Boards and Associations of REALTORS®, procuring cause in broker to broker disputes can be readily understood as the uninterrupted series of causal events which results in the successful transaction. Or, in other words, what "caused" the successful transaction to come about. "Successful transaction," as used in these Arbitration Guidelines, is defined as "a sale that closes or a lease that is executed." Many REALTORS®, Professional Standards Administrators, lawyers, and others have tried, albeit unsuccessfully, to develop a single, comprehensive template that could be used in all procuring cause disputes to determine entitlement to the sought-after award without the need for a comprehensive analysis of all relevant details of the underlying transaction. Such efforts, while well-intentioned, were doomed to failure in view of the fact that there is no "typical" real estate transaction any more than there is "typical" real estate or a "typical" REALTOR®. In light of the unique nature of real property and real estate transactions, and acknowledging that fair and equitable decisions could be reached only with a comprehensive understanding of the events that led to the transaction, the National Association's Board of Directors, in 1973, adopted Official Interpretation 31 of Article I, Section 2 of the Bylaws. Subsequently amended in 1977, Interpretation 31 establishes that:

> *A Board rule or a rule of a Multiple Listing Service owned by, operated by, or affiliated with a Board, which establishes, limits or restricts the REALTOR® in his relations with a potential purchaser, affecting recognition periods or purporting to predetermine entitlement to any award in arbitration, is an inequitable limitation on its membership.*

The explanation of Interpretation 31 goes on to provide, in part:

> *. . . [T]he Board or its MLS may not establish a rule or regulation which purports to predetermine entitlement to any awards in a real estate transaction. If controversy arises as to entitlement to any awards, it shall be determined by a hearing in arbitration on the merits of all ascertainable facts in the context of the specific case of controversy.*

It is not uncommon for procuring cause disputes to arise out of offers by listing brokers to compensate cooperating brokers made through a multiple listing service. A multiple listing service is defined as a facility for the orderly correlation and dissemination of listing information among Participants so that they may better serve their clients and customers and the public; is a means by which authorized Participants make blanket unilateral offers of compensation to other Participants (acting as subagents, buyer agents, or in other agency or nonagency capacities defined by law); is a means by which information is accumulated and disseminated to enable authorized Participants to prepare appraisals and other valuations of real property; and is a means by which Participants engaging in real estate appraisal contribute to common databases. Entitlement to compensation is determined by the cooperating broker's performance as procuring cause of the sale (or lease). While offers of compensation made by listing brokers to cooperating brokers through MLS are unconditional,* the definition of MLS and the offers of compensation made through the MLS provide that a listing broker's obligation to compensate a cooperating broker who was the procuring cause of sale (or lease) may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing agreement. In such instances, entitlement to cooperative compensation offered through MLS would be a question to be determined by an arbitration Hearing Panel based on all relevant facts and circumstances including, but not limited to, why it was impossible or financially unfeasible for the listing broker to collect some or all of the commission established in the listing agreement; at what point in the transaction did the listing broker know (or should have known) that some or all of the commission established in the listing agreement might not be paid; and how promptly had the listing broker communicated to cooperating brokers that the commission established in the listing agreement might not be paid. *(Revised 11/98)*

Factors for Consideration by Arbitration Hearing Panels

The following factors are recommended for consideration by Hearing Panels convened to arbitrate disputes between brokers, or between brokers and their clients or their customers. This list is not all-inclusive nor can it be. Not every factor will be applicable in every instance. The purpose is to guide panels as to facts, issues, and relevant questions that may aid them in reaching fair, equitable, and reasoned decisions.

*Compensation is unconditional except where local MLS rules permit listing brokers to reserve the right to reduce compensation offers to cooperating brokers in the event that the commission established in a listing contract is reduced by court action or by actions of a lender. Refer to **Part One**, G. Commission/Cooperative Compensation Offers, Section 1, Information Specifying the Compensation on Each Listing Filed with a Multiple Listing Service of a Board of REALTORS®, *Handbook on Multiple Listing Policy. (Adopted 11/98)*

Factor #1. No predetermined rule of entitlement

Every arbitration hearing is considered in light of all of the relevant facts and circumstances as presented by the parties and their witnesses. "Rules of thumb," prior decisions by other panels in other matters, and other predeterminants are to be disregarded.

Procuring cause shall be the primary determining factor in entitlement to compensation. Agency relationships, in and of themselves, do not determine entitlement to compensation. The agency relationship with the client and entitlement to compensation are separate issues. A relationship with the client, or lack of one, should only be considered in accordance with the guidelines established to assist panel members in determining procuring cause. *(Adopted 4/95)*

Factor #2. Arbitrability and appropriate parties

While primarily the responsibility of the Grievance Committee, arbitration Hearing Panels may consider questions of whether an arbitrable issue actually exists and whether the parties named are appropriate to arbitration. A detailed discussion of these questions can be found in Appendix I to **Part Ten,** Arbitrable Issues.

Factor #3. Relevance and admissibility

Frequently, Hearing Panels are asked to rule on questions of admissibility and relevancy. While state law, if applicable, controls, the general rule is that anything the Hearing Panel believes may assist it in reaching a fair, equitable, and knowledgeable decision is admissible.

Arbitration Hearing Panels are called on to resolve contractual questions, not to determine whether the law or the Code of Ethics has been violated. An otherwise substantiated award cannot be withheld solely on the basis that the Hearing Panel looks with disfavor on the potential recipient's manner of doing business or even that the panel believes that unethical conduct may have occurred. To prevent any appearance of bias, arbitration Hearing Panels and procedural review panels shall make no referrals of ethical concerns to the Grievance Committee. This is based on the premise that the fundamental right and primary responsibility to bring potentially unethical conduct to the attention of the Grievance Committee rests with the parties and others with firsthand knowledge. At the same time, evidence or testimony is not inadmissible simply because it relates to potentially unethical conduct. While an award (or failure to make a deserved award) cannot be used to "punish" a perceived "wrongdoer", it is equally true that Hearing Panels are entitled to (and fairness requires that they) consider all relevant evidence and testimony so that they will have a clear understanding of what transpired before determining entitlement to any award. *(Amended 11/96)*

Factor #4. Communication and contact — abandonment and estrangement

Many arbitrable disputes will turn on the relationship (or lack thereof) between a broker (often a cooperating broker) and a prospective purchaser. Panels will consider whether, under the circumstances and in accord with local custom and practice, the broker made reasonable efforts to develop and maintain an ongoing relationship with the purchaser. Panels will want to determine, in cases where two cooperating brokers have competing claims against a listing broker, whether the first cooperating broker actively maintained ongoing contact with the purchaser or, alternatively, whether the broker's inactivity, or perceived inactivity, may have caused the purchaser to reasonably conclude that the broker had lost interest or disengaged from the transaction (abandonment). In other instances, a purchaser, despite reasonable efforts by the broker to maintain ongoing contact, may seek assistance from another broker. The panel will want to consider why the purchaser was estranged from the first broker. In still other instances, there may be no question that there was an ongoing relationship between the broker and purchaser; the issue then becomes whether the broker's conduct or, alternatively, the broker's failure to act when necessary, caused the purchaser to terminate the relationship (estrangement). This can be caused, among other things, by words or actions or lack of words or actions when called for. Panels will want to consider whether such conduct, or lack thereof, caused a break in the series of events leading to the transaction and whether the successful transaction was actually brought about through the initiation of a separate, subsequent series of events by the second cooperating broker. *(Revised 11/99)*

Factor #5. Conformity with state law
The procedures by which arbitration requests are received, hearings are conducted, and awards are made must be in strict conformity with the law. In such matters, the advice of Board legal counsel should be followed.

Factor #6. Consideration of the entire course of events
The standard of proof in Board-conducted arbitration is a preponderance of the evidence, and the initial burden of proof rests with the party requesting arbitration (see Professional Standards Policy Statement 26). This does not, however, preclude panel members from asking questions of the parties or witnesses to confirm their understanding of testimony presented or to ensure that panel members have a clear understanding of the events that led to the transaction and to the request for arbitration. Since each transaction is unique, it is impossible to develop a comprehensive list of all issues or questions that panel members may want to consider in a particular hearing. Panel members are advised to consider the following, which are representative of the issues and questions frequently involved in arbitration hearings.

Nature and status of the transaction
(1) What was the nature of the transaction? Was there a residential or commercial sale/lease?
(2) Is or was the matter the subject of litigation involving the same parties and issues as the arbitration?

Nature, status, and terms of the listing agreement
(1) What was the nature of the listing or other agreement: exclusive right to sell, exclusive agency, open, or some other form of agreement?
(2) Was the listing agreement in writing? If not, is the listing agreement enforceable?
(3) Was the listing agreement in effect at the time the sales contract was executed?
(4) Was the property listed subject to a management agreement?
(5) Were the broker's actions in accordance with the terms and conditions of the listing agreement?
  (a) Were all conditions of the listing agreement met?
  (b) Did the final terms of the sale meet those specified in the listing agreement?
  (c) Did the transaction close? (Refer to Appendix I to **Part Ten,** Arbitrable Issues)
  (d) Did the listing broker receive a commission? If not, why not? (Refer to Appendix I to **Part Ten,** Arbitrable Issues)

Nature, status, and terms of buyer representation agreements
(1) What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?
(2) Was the buyer representation agreement(s) in writing? Is it enforceable?
(3) What were the terms of compensation established in the buyer representation agreement(s)?
(4) Was the buyer representative(s) a broker or firm to which an offer of compensation was made by the listing broker?
(5) Was the buyer representative(s) actions in accordance with the terms and conditions of the buyer representation agreement(s)?
(6) At what point in the buying process was the buyer representation relationship established? *(Revised 5/03)*

Nature, status, and terms of the offer to compensate
(1) Was an offer of cooperation and compensation made in writing? If not, how was it communicated?
(2) Is the claimant a party to whom the listing broker's offer of compensation was extended?
(3) Were the broker's actions in accordance with the terms and conditions of the offer of cooperation and compensation (if any)? Were all conditions of the agreement met?

Roles and relationships of the parties
(1) Who was the listing broker?
(2) Who was the cooperating broker or brokers?
(3) Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?
(4) Did the cooperating broker(s) have an agreement, written or otherwise, to act as agent or in another legally recognized capacity on behalf of any of the parties?
(5) Were any of the brokers (including the listing broker) acting as a principal in the transaction?
(6) What were the brokers' relationships with respect to the seller, the purchaser, the listing broker, and any other cooperating brokers involved in the transaction?
  (a) Was the buyer represented by a party with whom the broker had previously dealt?
  (b) Is the primary shareholder of the buyer-corporation a party with whom the broker had previously dealt?
  (c) Was a prior prospect a vital link to the buyer?
(7) Are all appropriate parties to the matter joined?

(Revised 5/03)

Initial contact with the purchaser

(1) Who first introduced the purchaser or tenant to the property?

(2) When was the first introduction made?

- (a) Was the introduction made when the buyer had a specific need for that type of property?
- (b) Was the introduction instrumental in creating the desire to purchase?
- (c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale?
- (d) Were there previous dealings between the buyer and the seller?
- (e) Did the buyer find the property on his own?

(3) How was the first introduction made?

- (a) Was the property introduced as an open house?
- (b) What subsequent efforts were made by the broker after the open house? (Refer to Factor #1)
- (c) Was the introduction made to a different representative of the buyer?
- (d) Was the "introduction" merely a mention that the property was listed?
- (e) What property was first introduced?

Conduct of the brokers

(1) Were all required disclosures complied with?

(2) Was there a faithful exercise of the duties a broker owes to his client/principal?

(3) If more than one cooperating broker was involved, was either (or both) aware of the other's role in the transaction?

(4) Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker? (Refer to Factor #4)

(5) Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction — that is, did the broker perform services which assisted the buyer in making his decision to purchase? (Refer to Factor #4)

- (a) Did the broker make preparations to show the property to the buyer?
- (b) Did the broker make continued efforts after showing the property?
- (c) Did the broker remove an impediment to the sale?
- (d) Did the broker make a proposal upon which the final transaction was based?
- (e) Did the broker motivate the buyer to purchase?

(6) How do the efforts of one broker compare to the efforts of another?

- (a) What was the relative amount of effort by one broker compared to another?
- (b) What was the relative success or failure of negotiations conducted by one broker compared to the other?

(7) If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?

Continuity and breaks in continuity (abandonment and estrangement)

(1) What was the length of time between the broker's efforts and the final sales agreement?

(2) Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?

- (a) Did the buyer terminate the relationship with the broker? Why? (Refer to Factor #4)
- (b) Did negotiations break down?

(3) If there was an interruption or break in the original series of events, how was it caused, and by whom?

- (a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?
- (b) Did the purchaser's motive for purchasing change?
- (c) Was there interference in the series of events from any outside or intervening cause or party?

(4) Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the broker's inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction?

(5) Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser, or at the request of the purchaser?

Conduct of the buyer

(1) Did the buyer make the decision to buy independent of the broker's efforts/information?

(2) Did the buyer negotiate without any aid from the broker?

(3) Did the buyer seek to freeze out the broker?

- (a) Did the buyer seek another broker in order to get a lower price?
- (b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?
- (c) Did the contract provide that no brokers or certain brokers had been involved?

Conduct of the seller

(1) Did the seller act in bad faith to deprive the broker of his commission?

- (a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?
- (b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?
- (c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?

(2) Was there bad faith evident from the fact that the seller told the broker he would not sell on certain terms, but did so via another broker or via the buyer directly?

Leasing transactions

(1) Did the cooperating broker have a tenant representation agreement?
(2) Was the cooperating broker working with the “authorized” staff member of the tenant company?
(3) Did the cooperating broker prepare a tenant needs analysis?
(4) Did the cooperating broker prepare a market analysis of available properties?
(5) Did the cooperating broker prepare a tour book showing alternative properties and conduct a tour?
(6) Did the cooperating broker show the tenant the property leased?
(7) Did the cooperating broker issue a request for proposal on behalf of the tenant for the property leased?
(8) Did the cooperating broker take an active part in the lease negotiations?
(9) Did the cooperating broker obtain the tenant’s signature on the lease document?
(10) Did the tenant work with more than one broker; and if so, why? *(Revised 11/96)*

Other information

Is there any other information that would assist the Hearing Panel in having a full, clear understanding of the transaction giving rise to the arbitration request or in reaching a fair and equitable resolution of the matter?

These questions are typical, but not all-inclusive, of the questions that may assist Hearing Panels in understanding the issues before them. The objective of a panel is to carefully and impartially weigh and analyze the whole course of conduct of the parties and render a reasoned peer judgment with respect to the issues and questions presented and to the request for award.

Sample Fact Situation Analysis

The National Association’s Professional Standards Committee has consistently taken the position that arbitration awards should not include findings of fact or rationale for the arbitrators’ award. Among the reasons for this are the fact that arbitration awards are not appealable on the merits but generally only on the limited procedural bases established in the governing state arbitration statute; that the issues considered by Hearing Panels are often myriad and complex, and the reasoning for an award may be equally complex and difficult to reduce to writing; and that the inclusion of written findings of fact or rationale (or both) would conceivably result in attempts to use such detail as “precedent” in subsequent hearings which might or might not involve similar facts. The end result might be elimination of the careful consideration of the entire course of events and conduct contemplated by these procedures and establishment of local, differing arbitration “templates” or predeterminants of entitlement inconsistent with these procedures and Interpretation 31.

Weighed against these concerns, however, was the desire to provide some model or sample applications of the factors, questions, and issues set forth in these Arbitration Guidelines. The following “fact situations” and analyses are provided for informational purposes and are not intended to carry precedential weight in any hearing.

Fact Situation #1

Listing Broker L placed a listing in the MLS and offered compensation to subagents and to buyer agents. Broker Z, not a participant in the MLS, called to arrange an appointment to show the property to a prospective purchaser. There was no discussion of compensation. Broker Z presented Broker L with a signed purchase agreement, which was accepted by the seller. Subsequently, Broker Z requested arbitration with Broker L, claiming to be the procuring cause of sale.

Analysis: While Broker Z may have been the procuring cause of sale, Broker L’s offer of compensation was made only to members of the MLS. Broker L never offered cooperation and compensation to Broker Z, nor did Broker Z request compensation at any time prior to instituting the arbitration request. There was no contractual relationship between them, and therefore no issue to arbitrate.

Fact Situation #2

Same as #1, except Broker Z is the buyer’s agent.

Analysis: Same result, since there was no contractual relationship between Broker L and Broker Z and no issue to arbitrate.

Fact Situation #3

Broker L placed a listing in the MLS and offered compensation to subagents and to buyer agents. Broker S (a subagent) showed the property to Buyer #1 on Sunday and again on Tuesday. On Wednesday, Broker A (a subagent) wrote an offer to purchase on behalf of Buyer #1 which was presented to the seller by Broker L and which was accepted. At closing, subagency compensation is paid to Broker A. Broker S subsequently filed an arbitration request against Broker A, claiming to be the procuring cause of sale.

Analysis: Broker S’s claim could have been brought against Broker A (pursuant to Standard of Practice 17-4) or against Broker L (the listing broker), who had promised to compensate the procuring cause of sale, thus arguably creating a contractual relationship between Broker L and Broker S. *(Amended 11/96)*

Fact Situation #4

Same as #3, except Broker S filed the arbitration request against Broker L (the listing broker).

Analysis: This is an arbitrable matter, since Broker L promised to compensate the procuring cause of sale. Broker L, to avoid the possibility of having to pay two cooperating brokers in the same transaction, should join Broker A in arbitration so that all competing claims can be resolved in a single hearing. The Hearing Panel will consider, among other things, why Buyer #1 made the offer to purchase through Broker A instead of Broker S. If it is determined that Broker S initiated a series of events which were unbroken in their continuity and which resulted in the sale, Broker S will likely prevail.

Fact Situation #5
Same as #3, except Broker L offered compensation only to subagents. Broker B (a buyer agent) requested permission to show the property to Buyer #1, wrote an offer which was accepted, and subsequently claimed to be the procuring cause of sale.

Analysis: Since Broker L did not make an offer of compensation to buyer brokers, there was no contractual relationship between Broker L and Broker B and no arbitrable issue to resolve.

If, on the other hand, Broker L had offered compensation to buyer brokers either through MLS or otherwise and had paid Broker A, then arbitration could have been conducted between Broker B and Broker A pursuant to Standard of Practice 17-4. Alternatively, arbitration could occur between Broker B and Broker L.

Fact Situation #6
Listing Broker L placed a listing in the MLS and made an offer of compensation to subagents and to buyer agents. Broker S (a subagent) showed the property to Buyer #1, who appeared uninterested. Broker S made no effort to further contact Buyer #1. Six weeks later, Broker B (a buyer broker) wrote an offer on the property on behalf of Buyer #1, presented it to Broker L, and it was accepted. Broker S subsequently filed for arbitration against Broker L, claiming to be the procuring cause. Broker L joined Broker B in the request so that all competing claims could be resolved in one hearing.

Analysis: The Hearing Panel will consider Broker S's initial introduction of the buyer to the property, the period of time between Broker S's last contact with the buyer and the time that Broker B wrote the offer, and the reason Buyer #1 did not ask Broker S to write the offer. Given the length of time between Broker S's last contact with the buyer, the fact that Broker S had made no subsequent effort to contact the buyer, and the length of time that transpired before the offer was written, abandonment of the buyer may have occurred. If this is the case, the Hearing Panel may conclude that Broker B instituted a second, separate series of events that was directly responsible for the successful transaction.

Fact Situation #7
Same as #6, except that Broker S (a subagent) showed Buyer #1 the property several times, most recently two days before the successful offer to purchase was written by Broker B (a buyer broker). At the arbitration hearing, Buyer #1 testified she was not dissatisfied in any way with Broker S but simply decided that "I needed a buyer agent to be sure that I got the best deal."

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; that Broker S had remained in contact with the buyer on an ongoing basis; and whether Broker S's efforts were primarily responsible for bringing about the successful transaction. Unless abandonment or estrangement can be demonstrated, resulting, for example, because of something Broker S said or did (or neglected to say or do but reasonably should have), Broker S will likely prevail. Agency relationships are not synonymous with nor determinative of procuring cause. Representation and entitlement to compensation are separate issues. *(Amended 11/99)*

Fact Situation #8
Similar to #6, except Buyer #1 asked Broker S for a comparative market analysis as the basis for making a purchase offer. Broker S reminded Buyer #1 that he (Broker S) had clearly disclosed his status as subagent, and that he could not counsel Buyer #1 as to the property's market value. Broker B based his claim to entitlement on the grounds that he had provided Buyer #1 with information that Broker S could not or would not provide.

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; that Broker S had made early and timely disclosure of his status as a subagent; whether adequate alternative market information was available to enable Buyer #1 to make an informed purchase decision; and whether Broker S's inability to provide a comparative market analysis of the property had clearly broken the chain of events leading to the sale. If the panel determines that the buyer did not have cause to leave Broker S for Broker B, they may conclude that the series of events initiated by Broker S remained unbroken, and Broker S will likely prevail.

Fact Situation #9
Similar to #6, except Broker S made no disclosure of his status as subagent (or its implications) until faced with Buyer #1's request for a comparative market analysis.

Analysis: The Hearing Panel should consider Broker S's initial introduction of the buyer to the property; Broker S's failure to clearly disclose his agency status on a timely basis; whether adequate alternative market information was available to enable Buyer #1 to make an informed purchase decision; and whether Broker S's belated disclosure of his agency status (and its implications) clearly broke the chain of events leading to the sale. If the panel determines that Broker S's failure to disclose his agency status was a reasonable basis for Buyer #1's decision to engage the services of Broker B, they may conclude that the series of events initiated by Broker S had been broken, and Broker B will likely prevail.

Fact Situation #10
Listing Broker L placed a property on the market for sale or lease and offered compensation to brokers inquiring about the property. Broker A, acting as a subagent, showed the property on two separate occasions to the vice president of manufacturing for ABC Corporation. Broker B, also acting as a subagent but independent of Broker A, showed the same property to the chairman of ABC Corporation, whom he had known for more than fifteen (15) years. The chairman liked the property and instructed Broker B to draft and present a lease on behalf of ABC Corporation to Broker L, which was accepted by the

owner/landlord. Subsequent to the commencement of the lease, Broker A requested arbitration with Broker L, claiming to be the procuring cause.

Analysis: This is an arbitrable matter as Broker L offered compensation to the procuring cause of the sale or lease. To avoid the possibility of having to pay two commissions, Broker L joined Broker B in arbitration so that all competing claims could be resolved in a single hearing. The Hearing Panel considered both brokers' introductions of the property to ABC Corporation. Should the Hearing Panel conclude that both brokers were acting independently and through separate series of events, the Hearing Panel may conclude that Broker B was directly responsible for the lease and should be entitled to the cooperating broker's portion of the commission. *(Adopted 11/96)*

Fact Situation #11

Broker A, acting as the agent for an out-of-state corporation, listed for sale or lease a 100,000 square foot industrial facility. The property was marketed offering compensation to both subagents and buyer/tenant agents. Over a period of several months, Broker A made the availability of the property known to XYZ Company and, on three (3) separate occasions, showed the property to various operational staff of XYZ Company. After the third showing, the vice president of finance asked Broker A to draft a lease for his review with the president of XYZ Company and its in-house counsel. The president, upon learning that Broker A was the listing agent for the property, instructed the vice president of finance to secure a tenant representative to ensure that XYZ Company was getting "the best deal." One week later, tenant representative Broker T presented Broker A with the same lease that Broker A had previously drafted and the president of XYZ Company had signed. The lease was accepted by the out-of-state corporation. Upon payment of the lease commission to Broker A, Broker A denied compensation to Broker T and Broker T immediately requested arbitration claiming to be the procuring cause.

Analysis: The Hearing Panel should consider Broker A's initial introduction of XYZ Company to the property, Broker A's contact with XYZ Company on an on-going basis, and whether Broker A initiated the series of events which led to the successful lease. Given the above facts, Broker A will likely prevail. Agency relationships are not synonymous with nor determinative of procuring cause. Representation and entitlement to compensation are separate issues.

Fact Situation #12

Broker A has had a long-standing relationship with Client B, the real estate manager of a large, diversified company. Broker A has acquired or disposed of twelve (12) properties for Client B over a five (5) year period. Client B asks Broker A to locate a large warehouse property to consolidate inventories from three local plants. Broker A conducts a careful evaluation of the operational and logistical needs of the plants, prepares a report of his findings for Client B, and identifies four (4) possible properties that seem to meet most of Client B's needs. At Client B's request, he arranges and conducts inspections of each of these properties with several operations level individuals. Two (2) of the properties were listed for sale exclusively by Broker C. After the inspections, Broker A sends Broker C a written registration letter in which he identifies Client B's company and outlines his expectation to be paid half of any commission that might arise from a transaction on either of the properties. Broker C responds with a written denial of registration, but agrees to share any commission that results from a transaction procured by Broker A on either of the properties. Six (6) weeks after the inspections, Client B selects one of the properties and instructs Broker A to initiate negotiations with Broker C. After several weeks the negotiations reach an impasse. Two (2) weeks later, Broker A learns that Broker C has presented a proposal directly to Client B for the other property that was previously inspected. Broker A then contacts Broker C, and demands to be included in the negotiations. Broker C refuses, telling Broker A that he has "lost control of his prospect," and will not be recognized if a transaction takes place on the second property. The negotiations proceed, ultimately resulting in a sale of the second property. Broker A files a request for arbitration against Broker C.

Analysis: This would be an arbitrable dispute as a compensation agreement existed between Broker A and Broker C. The Hearing Panel will consider Broker A's introduction of the property to Client B, the property reports prepared by Broker A, and the time between the impasse in negotiations on the first property and the sale of the second property. If the Hearing Panel determines that Broker A initiated the series of events that led to the successful sale, Broker A will likely prevail. *(Adopted 11/96)*

Arbitration Worksheet

NOTE: **Transmit to all parties.** This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
1. Was an offer of compensation made through the MLS or otherwise?					
2. Is the claimant a party to whom the listing broker's offer of compensation was extended?					
3. What was the nature of any buyer representation agreement(s)? Was the agreement(s) exclusive or non-exclusive? What capacity(ies) was the cooperating broker(s) functioning in, e.g., agent, legally-recognized non-agent, other?					
4. Were any of the brokers acting as subagents? As buyer brokers? In another legally recognized capacity?					
5. How was the first introduction to the property that was sold/ leased made?					
(a) Did the buyer/tenant find that property on their own?					
(b) Who first introduced the purchaser or tenant to that property?					
(c) Was the introduction made to a different representative of the buyer/tenant?					
(d) Was the "introduction" merely a mention that the property was listed?					
(e) Was the property introduced as an open house?					
(f) What subsequent efforts were made by the broker after the open house?					
(g) What property was first introduced?					
6. When was the first introduction to the property that was sold/leased made?					

Arbitration Worksheet
(continued)

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
(a) Was the introduction made when the buyer/tenant had a specific need for that type of property?					
(b) Was the introduction instrumental in creating the desire to purchase/lease?					
(c) Did the buyer know about the property before the broker contacted him? Did he know it was for sale/lease?					
(d) Were there previous dealings between the buyer and the seller?					
7. What efforts subsequent to the first introduction to the property were made by the broker introducing the property that was sold or leased?					
8. If more than one cooperating broker was involved, how and when did the second cooperating broker enter the transaction?					
9. Did the broker who made the initial introduction to the property engage in conduct (or fail to take some action) which caused the purchaser or tenant to utilize the services of another broker (estrangement)?					
(a) Were agency disclosures made? When?					
(b) Was the potential for dual agency disclosed? When?					
10. Did the broker who made the initial introduction to the property maintain contact with the purchaser or tenant, or could the brokers inaction have reasonably been viewed by the buyer or tenant as a withdrawal from the transaction (abandonment)?					

Arbitration Worksheet
(continued)

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
11. Was the entry of any cooperating broker into the transaction an intrusion into an existing relationship between the purchaser and another broker, or was it the result of abandonment or estrangement of the purchaser?					
12. Did the buyer make the decision to buy independent of the broker's efforts/information?					
13. Did the seller act in bad faith to deprive the broker of his commission?					
(a) Was there bad faith evident from the fact that the difference between the original bid submitted and the final sales price equaled the broker's commission?					
(b) Was there bad faith evident from the fact that a sale to a third party was a straw transaction (one in which a non-involved party posed as the buyer) which was designed to avoid paying commission?					
(c) Did the seller freeze out the broker to avoid a commission dispute or to avoid paying a commission at all?					
14. Did the buyer seek to freeze out the broker?					
(a) Did the buyer seek another broker in order to get a lower price?					
(b) Did the buyer express the desire not to deal with the broker and refuse to negotiate through him?					
(c) Did the contract provide that no brokers or certain brokers had been involved?					

Arbitration Worksheet
(continued)

NOTE: This worksheet is intended to assist Hearing Panels in identifying relevant issues and facts in determining questions of entitlement to disputed funds. It is intended to supplement—and not replace—the comprehensive list of questions found in Factor #6 in the Arbitration Guidelines. These questions are not listed in order of priority and are not weighted equally.

Question	Answer	Favors Complainant	Favors Respondent	Favors Neither	Other
15. Did the original introduction of the purchaser or tenant to the property start an uninterrupted series of events leading to the sale or lease, or was the series of events hindered or interrupted in any way?					
16. If there was an interruption or break in the original series of events, how was it caused, and by whom?					
(a) Did the seller change the listing agreement from an open listing to an exclusive listing agreement with another broker?					
(b) Did the buyer terminate the relationship with the broker? Why?					
(c) Was there interference in the series of events from any outside or intervening cause or party?					
(d) Was there abandonment or estrangement?					
17. Did the cooperating broker (or second cooperating broker) initiate a separate series of events, unrelated to and not dependent on any other broker's efforts, which led to the successful transaction—that is, did the broker perform services which assisted the buyer in making his decision to purchase?					
(a) Did the broker make preparations to show the property to the buyer?					
(b) Did the broker make continued efforts after showing the property?					
(c) Did the broker remove an impediment to the sale?					
(d) Did the broker make a proposal upon which the final transaction was based?					
(e) Did the broker motivate the buyer to purchase?					*(Adopted 11/03)*

Appendix III to Part Ten

Rationale of Declaratory Relief and of Judicial Enforcement in Matters of Arbitration

With respect to arbitration awards rendered by Member Boards, it is important that the Board utilize the powers of local courts to support and enforce its arbitration awards and any Board actions contemplated in connection with arbitration by the Board. Both the Petition for Declaratory Relief and Petition for Judicial Enforcement should be employed by the Board where it will confirm the propriety of the Board's actions and will minimize legal vulnerability and liability to the Board and its members. These legal procedures, or similar legal devices available in a given state, should be employed in the following circumstances:

(1) **Refusal to Arbitrate:** If a membership obligation to arbitrate disputes is permitted by applicable law, it is required of members in accordance with the Board's professional standards procedures. Refusal of a member to arbitrate, or meditate if required by the Board, shall be determined by a hearing by the Board of Directors as specified in **Part Ten,** Section 49, Initial Action of Directors. *(Revised 05/15)*

Upon determination of the sole question of fact that a Board Member has refused to arbitrate or mediate a properly arbitrable matter, the Board of Directors may direct the implementation of appropriate sanction, and should, if it has reason to believe that the imposition of sanction will become the basis of litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. *(Revised 05/15)*

(2) **Refusal to, within Ten (10) Days of Transmittal of Award, Abide by Award or Deposit a Like Amount with Board Staff:** Consistent with Section 53, The Award, the non-prevailing party must, within ten (10) days following transmittal of the award, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for that purpose. Failure to satisfy the award or deposit the funds in the escrow or trust account within the time specified may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors, consistent with Section 53, The Award. *(Adopted 05/15)*

Requiring the non-prevailing party to, within ten (10) days, either pay the award or deposit the funds with the Board reduces instances of non-prevailing parties refusing to pay arbitration awards by shifting the burden of initiating litigation from the prevailing party to the non-prevailing party. *(Adopted 05/15)*

With respect to a party agreeing and submitting to arbitration but then refusing to abide by the award, the Board should encourage the award recipient to seek enforcement of the award in the courts, and suggest that a request be made for payment of legal costs incurred in seeking judicial enforcement. *(Amended 05/15)*

Although the primary responsibility for the enforcement of the award rests with the beneficiary of that award (with the support, financial or otherwise, of the Board), the Board may consider reimbursing the recipient of the award for any cost incurred in seeking the judicial enforcement when such costs are not reimbursed by the court. *(Revised 05/15)*

Appendix IV to Part Ten

Rationale for No Findings of Fact in Awards

Arbitration awards, unlike ethics decisions, are not subject to appeal and do not include findings of fact or rationale. While arbitration awards may, at times, involve significant sums of money, they differ from the decisions rendered by ethics hearing panels in two significant ways. First, the fact that a party in arbitration does not prevail is in no way an indication that the non-prevailing party behaved in anything other than an ethical manner. It simply means that they were not entitled to a particular sum of money with respect to a particular transaction. Second, the determinations rendered through arbitration have no effect on a REALTOR®'s continued good standing in the association or in the real estate community generally, whereas an adverse decision in a matter involving ethics demonstrates that the respondent has, in some way, failed to live up to the standards expected of REALTORS® and may result in discipline being imposed, including the possibility of suspension or expulsion from membership.

Arbitration awards are based on the hearing panel's analysis of the entire course of conduct giving rise to a dispute as demonstrated by the evidence and testimony presented in the course of the arbitration hearing. There is generally not a single act (or in some cases failure to act), statement, or particular event, but rather the entire course of conduct or events related to a transaction that forms the basis for the hearing panel making its arbitration award. Reducing, to a comprehensive writing, the grounds on which an arbitration award was made, could frequently be far more complex—and difficult—than formulating the findings of fact (which may involve a single act or disclosure, or failure to act or disclose) which results in a determination that the Code of Ethics has been violated.

Consider that the obligations imposed by the Code of Ethics are, in most instances, clearly articulated in the Articles themselves, in the Standards of Practice, or in the official case interpretations. Thus, it is frequently readily apparent what a REALTOR® must do or say or, alternatively, must avoid saying or doing to ensure compliance with the Code. Arbitrable disputes, on the other hand, are very often (though not always) determined on the basis of procuring cause, a concept that cannot readily be reduced to a prescribed or proscribed action or event.

It is not uncommon for a non-prevailing party in arbitration to request an explanation or justification of a hearing panel's rationale for making an award. While this might be beneficial, at least in the sense that the non-prevailing party might understand, if not appreciate, the basis on which the award was based, there has been an on-going concern that, given the task of comprehensively and accurately articulating all of the acts and factors that are taken into account by an arbitration panel in rendering its award, there might be an understandable (and possibly unavoidable) tendency to oversimplify or generalize the basis on which an award was made, with the resulting explanation or rationale or "findings", whether written or oral, being relied on by the non-prevailing party (and likely by others) as "precedent" to be introduced and relied on at future arbitration hearings. The unintended consequence of providing explanations or rationale or "findings" is contrary to the policy embodied in Official Interpretation 31 of Article I, Section 2 of the National Association's bylaws which prohibits any rule or policy predetermining awards in arbitration. Arbitrable matters must be decided not on the basis of a single aspect of the total transaction, such as making the first showing, or writing the contract, but rather on careful, deliberate consideration of all relevant facts and circumstances.

While the question of whether arbitration decisions should include findings of fact has been discussed by the Professional Standards Committee on several occasions over the years, the Committee has consistently held that any possible educational benefits are far outweighed by the possibility that a proliferation of local association "arbitration case law" might quickly come into existence and that hearing panels would come to rely on these local determinations as the basis for subsequent arbitration awards instead of looking at each disputed transaction in its totality. It is for these reasons that the policies and procedures in the *Code of Ethics and Arbitration Manual* do not contemplate that written or oral explanations or rationale or "findings" will be part of arbitration awards rendered by hearing panels of associations of REALTORS®.

(Adopted 11/06)

Appendix V to Part Ten

Arbitration Hearing Checklist

(1) **Arbitration of disputes.** "Dispute" and "arbitrable matter" refer to those contractual issues and questions, and certain specific non-contractual issues and questions outlined in Standard of Practice 17-4, including entitlement to commissions and compensation in cooperative transactions between REALTORS® and between REALTORS® and their clients and customers. (See **Part Ten,** Section 43 of this Manual.) *(Revised 11/96)*

Requests for arbitration must be filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later. Boards may provide mediation even if arbitration has not been requested provided the mediation is requested within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

Suspension of filing deadlines: If the Board's informal dispute resolution processes (e.g., ombudsmen, mediation, etc.) are invoked or initiated by a complainant (or potential complainant) with respect to an otherwise potentially arbitrable matter that becomes the subject of a subsequent arbitration request, the one hundred eighty (180) day filing deadline shall be suspended beginning with the date of the complainant's (or potential complainant's) request for informal dispute resolution service or assistance and shall resume when the informal dispute resolution procedures are concluded or terminated. Questions about when informal dispute resolution began or ended will be determined by the Board President or the President's designee. *(Revised 11/00)*

(2) **Must be consistent with state law**. All arbitration hearings must be conducted in a manner consistent with state law.

(3) **Three (3) or more arbitrators necessary.** No arbitration may proceed without three (3) or more arbitrators not disqualified pursuant to the provisions of paragraphs (a) through (f) of **Part Seven,** Section 27 of this Manual.

(4) **Substitute arbitrator.** If an arbitrator is disqualified, the President (or other individual) shall appoint another member qualified to serve as an arbitrator.

(5) **Duty and privilege to arbitrate.** By becoming and remaining a member, and by signing or having signed the agreement to abide by the bylaws of the Board, every member, where consistent with applicable state law, binds himself or herself and agrees to submit to arbitration (and mediation if required) by the Board all disputes as defined in **Part Ten,** Section 44 of this Manual. Refer to Section 44 to determine the types of arbitration that are mandatory obligations upon members where not precluded by state law, and those types that should be offered as a service of the Board but are not mandatory obligations upon members. *(Revised 11/11)*

(6) **Conformity to state law.** Refer to **Part Ten,** Section 43 of this Manual for important information concerning the necessity to know the applicable state statutes or case law governing arbitration and to conform the Board's arbitration procedures to the law. Board or State Association legal counsel may advise the Board in this respect.

(7) **Board's right to decline arbitration.** The Board should be aware of its right to decline to arbitrate a dispute between members or between members and nonmembers. If either the Grievance Committee or the arbitration Hearing Panel determines that the matter should not be arbitrated because of the amount involved (too little or too much), or because of the legal complexity of the matter, the arbitration automatically terminates unless either of the parties appeals the decision to the Board of Directors within twenty (20) days of the date of the notice of the Grievance Committee's or arbitration Hearing Panel's decision using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; however, no additional information may be added or attached to the form. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. If the Board declines to arbitrate the matter, any deposits shall be returned to the parties. If the Board of Directors decides that arbitration should proceed, the matter is remanded to the Grievance Committee or arbitration Hearing Panel for further processing. *(Amended 5/97)*

If an appeal is filed, the President may appoint a panel to hear the appeal composed of at least five (5) Directors or a quorum of the Board of Directors, whichever is less. (Alternatively, the appeal may be heard by the Board's Executive Committee.) The decision of the appeal panel (or Executive Committee) is final and not subject to further review by the Board of Directors. *(Revised 11/91)*

If an otherwise arbitrable matter is the subject of civil litigation, arbitration shall not take place unless the litigation is withdrawn or referred to the Board by the court for arbitration in accordance with Article 17. In instances where the arbitration is mandatory (as defined in **Part Ten,** Section 44 of this Manual) the failure to arbitrate may result in a charge alleging violation of Article 17.

(8) **Duty to arbitrate before State Association.** As a member of a local Board, the Board Member is obligated to arbitrate a dispute with a member of another Board or a member who is directly a member of the State Association. (State Association bylaws have provisions of professional standards procedures as they relate to ethics and arbitration proceedings.)

(9) **Interstate arbitration.** The procedures described in **Part Eleven** of this Manual may be used for arbitrating disputes between REALTOR® members of Boards located in different states, subject to the parties' voluntary agreement in advance to the place, date, and time established by the arbitration Hearing Panel, and agreement to pay all costs of the arbitration as may be directed

by the panel, and further subject to the applicable law of the state in which the arbitration is held.

(10) **Manner of invoking arbitration.** Any Board Member, client, or customer authorized to do so may request arbitration by the Board. The request shall be in writing, indicating the nature of the dispute and the amount in dispute, and must be accompanied by the required arbitration filing fee (deposit). The request may be on a Board form or other form permitted by law. The Professional Standards Administrator shall refer the request to the Grievance Committee for determination within the time specified by the Board's professional standards procedures as to whether the matter is properly subject to arbitration, and as to whether the circumstances impose a mandatory obligation to arbitrate or arbitration is voluntary (to be conducted only if all parties voluntarily agree to arbitrate and be bound by the decision).

(11) **Dismissal of request for arbitration.** If the request for arbitration is dismissed by the Grievance Committee or the Hearing Panel, the complainant (requester) shall be informed of the dismissal and the reasons for the dismissal, and may appeal to the Board of Directors within the time specified in the Board's procedures using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request. The arbitration request and any attachments to the request may not be revised, modified, or supplemented. The complainant may, however, explain in writing why the complainant disagrees with the Grievance Committee's conclusion that the request should be dismissed. With the appeal, the Directors shall consider only the same information that was available to the Grievance Committee or Hearing Panel at the time of dismissal of the request for arbitration. The complainant and respondent do not have the right to be present at the Directors' meeting. *(Revised 5/07)*

(12) **Function of Grievance Committee.** The function of the Grievance Committee is to make only such preliminary review as is required to determine proper disposition of the request for arbitration. In reviewing a request for arbitration, the purpose of the review is to determine (1) if the requester is authorized to invoke arbitration by the professional standards procedures in the Board's bylaws; (2) if the requested arbitration is mandated by the Board's bylaws or is voluntary on the part of the parties; (3) if the dispute described is an arbitrable matter; and (4) if the matter, either as to monetary amount (too small or too large) or as to legal complexity, is such that the Board should decline to arbitrate the matter and release the Board Members from their obligation to arbitrate, and thus free the members to seek other recourse to resolve the dispute.

(13) **Director on Grievance Committee.** A member of the Grievance Committee who is a member of the Board of Directors may not sit as a Director during an appeal to the Board of Directors of the Grievance Committee's decision to dismiss a request for arbitration, and may not vote on such appeal.

(14) **If matter referred for arbitration.** If the request for arbitration is referred for hearing, the Chairperson of the Grievance Committee shall refer it to the Professional Standards Administrator with instructions to arrange an arbitration hearing. The Professional Standards Administrator shall notify the other party within the time specified in the Board's procedures, except that a reasonable delay does not invalidate the procedure. The Professional Standards Administrator shall mail a copy of the complaint to the respondent and provide forms for reply by the respondent, with directions to complete the forms, including the "Arbitration Agreement," and return them to the Professional Standards Administrator within the time specified in the Board's procedures.

(15) **Obligation to arbitrate.** The Board Member is obligated to arbitrate under certain circumstances if mandatory arbitration is permitted by state law. The member, by becoming and remaining a member, has entered into a prior agreement to arbitrate and acknowledges this prior agreement by signing an agreement to arbitrate and abide by the award in each case. If the applicable state law does not permit prior agreements to arbitrate, then arbitration may be voluntarily agreed to by the parties after the dispute arises.

(16) **Content of agreement to arbitrate.** The Arbitration Agreement shall acknowledge the membership duty voluntarily accepted when the party sought and received membership in the Board, and shall specify that the party does now, in accordance with the prior agreement to arbitrate, acknowledge and enter into such agreement and agree to abide by the award. The Arbitration Agreement shall be accompanied by a concise statement of the matter in dispute. Each party must sign and file the Agreement with the Professional Standards Administrator, along with any required deposit. The deposit may be returned to the recipient of the arbitration award. *(Amended 11/95)*

(17) **Refusal of respondent to appear and/or sign the Arbitration Agreement.** The circumstances under which Member Boards may conduct arbitration will vary based on state arbitration statutes and case law. In some states, arbitration may be conducted only if both parties sign the Arbitration Agreements, deposit the required amounts, and appear and take part in the hearing. In other states, arbitration may proceed in the absence of signed Arbitration Agreements and deposits if the parties appear and take part in the hearing. In still other states, arbitration may take place and a valid award may be rendered even if the respondent refuses to sign the Arbitration Agreement and refuses to take part in the hearing. Refer to **Part Ten,** Section 48(b) of this Manual for important information on the need to determine whether state law permits arbitration to proceed if the respondent refuses to appear at the hearing and/or refuses to sign the Arbitration Agreement.

(18) **Reply from respondent.** No sooner than fifteen (15) days nor later than twenty-one (21) days after transmitting notice of hearing and a copy of the complaint to the respondent, the Professional Standards Administrator shall transmit a copy of any reply by the respondent to the complainant within five (5) days from receipt of the response. A Board may ask for a response to an arbitration request but may not require one. *(Revised 11/14)*

(19) **Opportunity for challenge of possible arbitrators.** When the Professional Standards Administrator transmits a copy of the

reply, if any, from the respondent, the Professional Standards Administrator shall also transmit to the parties a list of members of the Professional Standards Committee from whom an arbitration Hearing Panel of at least three (3) members will be appointed, and advise of their right to challenge for cause the qualification of any member to serve as an arbitrator if such list has not already been transmitted to the parties with notification of the Grievance Committee's referral for hearing. Any disqualification must be filed within ten (10) days from the date the list of names was transmitted to the parties. Within fifteen (15) days from the date the list of names is transmitted to the parties, the arbitration Hearing Panel members shall be appointed by the Professional Standards Committee Chairperson from the members of the Professional Standards Committee who are not successfully challenged by the complainant or respondent for cause. A majority must be REALTORS®, and if a REALTOR ASSOCIATE® or REALTOR® other than a principal has invoked the arbitration through the REALTOR® principal, or is affiliated with the respondent, and has a vested interest in the outcome of the proceeding, one (1) of the arbitrators shall be a REALTOR ASSOCIATE® or REALTOR® other than a principal. The Chairperson shall also select one (1) of the panel members to serve as Chairperson of the Hearing Panel. *(Revised 11/14)*

If the arbitration involves issues related to areas of the real estate business such as commercial, investment, industrial, etc., and there is not a sufficient number of qualified practitioners on the Board's Professional Standards Committee to constitute a representative peer panel, the President shall appoint other Board Members qualified in that field to serve on the panel. If other qualified members cannot be identified, that fact is reported by the President to the Board of Directors, and if the Directors concur, the matter is referred to the State Association as outlined in **Part Fourteen** of this Manual. If the State Association cannot impanel a qualified peer panel, the complainant and respondent are released from their obligation to arbitrate. *(Revised 11/98)*

(20) **Date, time, and place of hearing.** The arbitration Hearing Panel will establish the date, time, and place for the arbitration hearing. Notice shall be given at least twenty-one (21) days prior to the date of hearing. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. (However, appearance by a party at an arbitration hearing waives the right to such notice.) The arbitration request and response, if any, shall be provided to Hearing Panel members prior to the hearing. Such time period shall be ________ (as determined by the Board of Directors) and shall be adhered to for all hearings. *(Revised 11/14)*

(21) **Written statements and proof.** In addition to the request for arbitration and the response to the arbitration request, the parties to the arbitration shall, upon notice of the hearing, present to the arbitrators, in writing, such statements and proof as they deem necessary to support their claims. The Hearing Panel may require statements to be verified by affidavit and/or that the accuracy or authenticity of documents or papers be verified by affidavit. In addition to written statements and proof provided to the arbitrators prior to the hearing, the Hearing Panel may, at the hearing, receive any further written statements, documents, or other papers, and shall hear oral testimony as described in **Part Ten,** Section 51 of this Manual.

(22) **Arbitrators to regulate hearing.** The Hearing Panel determines (1) date, time, and place of hearing; (2) what appearances are to be made by the parties; (3) what evidence it will receive and consider, including the evidence of accountants and other experts; and (4) interpretations of Board bylaw provisions. Each party is responsible for the expenses of his/her expert witnesses and legal counsel. Arbitration hearings should be conducted in accordance with the Chairperson's Procedural Guide, **Part Ten,** Section 51 and Part Twelve of this Manual.

(23) **Witnesses sworn or affirmed.** Prior to testifying, all parties and witnesses shall be sworn or affirmed by the Chairperson as described in the Chairperson's Procedural Guide in **Part Twelve** of this Manual.

(24) **Witnesses present only as necessary to hearing.** Witnesses shall be present during the arbitration hearing only as necessary to receive instructions, to be sworn or affirmed, to give testimony, and to respond to cross-examination. Witnesses should be excused during other parts of the hearing.

(25) **Opening statement by parties or attorneys.** Each party or the party's attorney-at-law shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party's position in respect of the matter to be arbitrated.

(26) **Testimony of character or general business reputation of party.** No testimony may be admitted related to the character or general business reputation of any party unless such testimony has a direct bearing on the matter being heard.

(27) **Testimony.** The complainant may give testimony and present evidence as deemed appropriate to the arbitration by the Hearing Panel. Following presentation by the complainant, the respondent shall testify. The parties shall present to the arbitrators their oral testimony and such written statements and proof as the arbitrators may require. Proof may be by affidavit or other form acceptable to the arbitrators.

(28) **Right to cross-examine.** At the conclusion of testimony by each party, or by a witness, the opposing party and/or his/her counsel may cross-examine the party or witness.

(29) **Arbitrators' examination of parties or witnesses.** Upon completion of testimony and cross-examination of any party or witness, the arbitrators may examine the party or witness.

(30) **Summary of each party.** Upon completion of all testimony, each party or party's attorney may summarize the proceedings for the Hearing Panel. The complainant's summary shall be presented first, and the respondent's summary follows.

(31) **Parties excused for executive session and decision by arbitrators.** After the summary by each party, the parties shall be excused from the hearing room, and the arbitrators shall, in executive session, render their decision. The arbitrators shall be guided in the evaluation of all the evidence by the Arbitration Guidelines in **Part Ten,** Appendix II of this Manual.

(32) **Parties' settlement of the issue at any time.** The parties to the arbitration may settle the issue between them at any time. If they settle, they shall advise the Professional Standards Administrator, and the arbitration shall be terminated and so recorded in the file.

(33) **The award.** The award shall be made as soon as possible after the evidence is presented. The award shall be in writing and signed by the arbitrators or a majority of them, and shall state only the amount of the award, and when transmitted to each of the parties shall not be subject to review or appeal. Notwithstanding the foregoing, a party may appeal to the Board of Directors only on the basis of alleged irregularity(ies) of the proceeding as may have deprived the party of fundamental due process. The Directors shall not receive or review evidence offered as to the merits of the award, except as such evidence may bear upon a claim of deprivation of due process. After the award has been transmitted to each of the parties, they have twenty (20) days to request procedural review of the arbitration hearing by the Board of Directors. If no such review is requested, the award becomes final and binding following the twenty (20) day period. However, if procedural review is requested, the award is not considered final and binding until after the Board of Directors has concluded that the hearing had been conducted in a manner consistent with the Board's procedures and the parties had been afforded due process. (See **Part Ten,** Sections 53 and 55 of this Manual.) *(Revised 11/14)*

(34) **Escrowing of arbitration awards.** Boards must adopt procedures that require the nonprevailing party to either pay the award or deposit the amount with the Board within ten (10) days of transmittal of the award. Please refer to **Part Ten,** Section 53 of this Manual. *(Revised 05/15)*

In the event a party fails to, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, Code of Ethics and Arbitration Manual, that failure shall be brought before the Directors. The Directors, consistent with Section 53, may, at their discretion, impose discipline, including but not limited to termination of Board membership and/or MLS access/use, or may give the party an additional period to make the required deposit. The directors may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the Directors. *(Adopted 05/15)*

(35) **Request for procedural review.** The appeal may be heard by a panel of Directors appointed by the President or heard by the Board's Executive Committee. The request for procedural review shall be reviewed by the Board President or the President's designee only for the purpose of determining whether the request states any legitimate basis for consideration by the Board of Directors. Any appeal panel must be comprised of five (5) Directors or a quorum of the Board of Directors, whichever is less. The decision of the appeal panel (or Executive Committee) is final and binding and is not subject to further review by the Board of Directors. All requests for procedural review received by the Board must be considered by the Board of Directors and only the bases raised in the written request for procedural review may be raised during the review before the Directors. *(Amended 11/94)*

(36) **If a REALTOR® refuses to arbitrate.** If a REALTOR® is charged in an ethics complaint of improperly refusing to submit a dispute to arbitration (or mediation if required by a Board) as specified in **Part Ten,** Section 49 of this Manual, the complaint shall not be referred to the Grievance Committee or a Hearing Panel, but shall be brought before the Board of Directors at the next regularly scheduled meeting or at a special meeting called by the President for that purpose. The procedures for notice, time of notice, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact for the Directors to decide will be whether the respondent failed to submit an arbitrable matter (as defined in **Part Ten,** Sections 43 and 44 of this Manual) to arbitration or mediation in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the Directors may direct the imposition of appropriate sanction and should, if they have reason to believe that the imposition of sanction will become the basis for litigation and a claim for damages consequent to such sanction, delay the effective date of implementing the sanction to a date following receipt by the Board of a judicial decision in a petition for declaratory relief filed by the Board to confirm the propriety of its action. (Amended 11/11)

(37) **Enforcement of award.** If a party refuses to abide by an award in arbitration or the terms of a mediated settlement agreement, such refusal should not be referred to the Grievance Committee as a violation of the Code of Ethics unless it reflects an established pattern or practice of noncompliance with the commitment to arbitrate/mediate. The award recipient, or the beneficiary of a settlement agreement reached by the parties in mediation, should be advised by the Board to seek judicial enforcement of the award/agreement by a local court of competent jurisdiction and to request reimbursement of legal fees incurred in seeking enforcement. (Refer to **Part Ten,** Section 56 of this Manual.) If the court does not award reimbursement of legal fees, the Board of Directors may, at its discretion, reimburse the award recipient/beneficiary for legal fees incurred in seeking enforcement. (See **Part Ten,** Appendix III of this Manual for the rationale of judicial enforcement of awards in arbitration.) *(Revised 11/14)*

Summary of Administrative Time Frames — Arbitration Proceedings

Situation	Time Table
Grievance	
Request filed	180 days . . .
Response required/# of days to submit	Optional/15 days from transmitting request to respondent if response solicited
Appeal dismissal to Directors	20 days from transmitting dismissal notice
Appeal of mandatory vs. voluntary classification	20 days from transmittal of decision
Hearing	
Notification to respondent of request	5 days from transmittal of Grievance Committee's instruction
Response required	15 days from transmitting request to respondent; staff transmits response to complainant within 5 days from receipt
Challenge forms	10 days to challenge from date forms transmitted
Panel named	15 days from transmitting challenge forms
Hearing notice*	21 days before hearing
Arbitration case to panel	Board option
Notice of witnesses and attorney	15 days before hearing to Board and other party
Procedural Review	
Request filed	20 days from transmitting award
Preliminary review	Optional number of days
Amendment received	Within 10 days of notice
Review held by Directors	Next/special meeting giving not less than 10 days notice but not later than 30 days after receipt of procedural review request; Directors transmit written decision within 5 days from the procedural review hearing

(Revised 11/17)

* Notice of hearing should be transmitted to the parties with the Outline of Procedure (Form #A-10 or Form #A-10a, as appropriate) and the Arbitration Guidelines (including the Worksheet contained in Appendix II to **Part Ten**).

Appendix VI to Part Ten

Mediation as a Service of Member Boards

Although no party to an arbitrable matter can be required to submit to mediation (unless REALTORS® [principals] are required by their Board to mediate otherwise arbitrable disputes pursuant to Article 17) and mediation cannot and is not intended to be a substitute for the arbitration procedures described elsewhere in this Manual, mediation can be a useful tool in resolving the conflicts that arise involving Board Members and their clients and customers. Mediation must be available in instances where arbitration would be provided under **Part Ten,** Section 44 of this Manual and a Board can require REALTORS® (principals) to mediate otherwise arbitrable disputes pursuant to Article 17. Mediation can resolve disputes, promote amicable resolutions, and reduce the number of cases requiring the more formal and complex arbitration procedures of the Board, thus reducing the time and effort required of Board Members serving on the Professional Standards Committee. *(Revised 11/11)*

Selection of Board Mediation Officer:
Conducting successful mediation procedures requires tact, diplomacy, and a sense of equity. Careful consideration should be given by the Board President (or the Board of Directors of the Board) in selecting the Board's Mediation Officer. Many Boards will find that one Mediation Officer will be sufficient. However, in large Boards, consideration can be given to appointing a standing panel of two, three, or more Mediation Officers depending upon the number of requests for arbitration normally filed in the course of a year.

A Board Mediation Officer should be appointed for a term of at least one (1) year. Consideration can be given by the local Board to making the appointment for two (2) or even three (3) years. It is strongly recommended that any individual serving as a Board Mediation Officer have extensive prior experience on the Board's Grievance Committee, Professional Standards Committee, and/or Board of Directors. The Mediation Officer should be thoroughly conversant with the Board's arbitration procedures as well as with the real estate rules and regulations of the state. It is recommended that the Mediation Officer not serve concurrently as either an officer or director of the Board, or as a member of the Grievance Committee, or as a member of the Professional Standards Committee. If Mediation Officers are members of the Grievance Committee, they shall not participate in the consideration of requests for arbitration or ethics complaints arising out of the same facts and circumstances giving rise to a matter they attempted to mediate. If Mediation Officers are members of the Professional Standards Committee, they shall not serve on an arbitration Hearing Panel in cases where they had initially attempted to resolve the dispute prior to an arbitration hearing, or on an ethics Hearing Panel in cases where an ethics complaint arises out of the same facts and circumstances giving rise to a matter they attempted to mediate.

Although ombuds and mediators who serve in either capacity are not part of a tribunal, they nonetheless may not participate in the deliberation of any tribunal on the same matter for which they provided the ombuds or mediation service. An ombuds may not serve as a mediator on the same matter for which they provided the ombuds service. *(Adopted 11/22)*

The Mediation Officer should be someone widely respected for fairness, experience, and impartiality. Only to the degree that all parties to the mediation can be confident that the mediator is impartial will mediation procedures be successful. By having more than one Mediation Officer, assignments can be made to utilize a particular individual whose experience, abilities, and relationship renders him/her most appropriate for the particular assignment. *(Revised 11/91)*

Mediation is Mandatory or Voluntary as Determined by the Board:
It must be understood by all parties that participation in mediation procedures is entirely voluntary unless REALTORS® (principals) are required by their Board to mediate otherwise arbitrable disputes pursuant to Article 17. If the Board or Association does not require REALTORS® (principals) to mediate otherwise arbitrable matters, the parties should be offered the opportunity and encouraged to participate in the mediation process in good faith, and, further, encouraged to abide by the determination. The parties to mediation should be aware that they may withdraw from the process at any point prior to reaching an agreement. Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Board's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement has been reduced to writing and has been signed by all of the parties, the matter is deemed resolved and cannot be the subject of a subsequent arbitration hearing. In the event either of the parties later fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction. (A sample settlement agreement is included as Form #A-17, in **Part Thirteen** of this Manual.) *(Revised 5/12)*

Need for Adequate Notice:
In mediation the need for due process remains. Generally, there will be no need for the parties to be represented by legal counsel nor for the Board to have legal counsel present at a mediation proceeding. However, since mediation is an attempt to bring the disputing parties together in an informal setting to resolve their differences, every effort should be made to ensure that the parties are provided with adequate prior notice (at least ten [10] days) and that the time and location of the proceeding is mutually convenient to all involved. However, this requirement shall not preclude parties to a dispute waiving such notice and agreeing to mediate at any time agreed by all parties. *(Revised 5/12)*

Initiation of Mediation Proceedings:
The Professional Standards Administrator, upon receipt of a request for arbitration, will advise all parties of their mediation obligations and options to participate in mediation prior to review of the arbitration request by the Grievance Committee. If mediation is voluntary and the parties agree, the matter will be referred to the Mediation Officer, who will arrange a mutually convenient time and location for mediation. When mediation is voluntary and the mediation attempt is unsuccessful, or if either of the parties wishes to discontinue the mediation process for any reason, then mediation will be terminated and the request for arbitration will be referred to the Grievance Committee for review. Regardless of whether mediation is voluntary or mandatory, if either party requests that mediation be deferred until after the arbitration request can be reviewed by the Grievance Committee, the arbitration request will be referred to the Grievance Committee for that committee's determination whether (a) an arbitrable issue exists, and (b) whether arbitration would be voluntary or mandatory. Where any party initially declines to mediate pending the Grievance Committee's review of the arbitration request, the parties shall in all instances again be offered the opportunity to mediate following the Grievance Committee's review. *(Revised 5/12)*

Boards may also offer disputing parties an opportunity to mediate prior to an arbitration request being filed. *(Adopted 11/11)*

NOTE: If a Board requires REALTORS® (principals) to mediate otherwise arbitrable disputes, there can be no allegation of a violation of Article 17 if a party refuses to mediate unless an arbitration request has been filed, the Grievance Committee has referred the arbitration request for hearing on a mandatory basis, and the party then refuses to mediate. *(Adopted 11/11)*

Conduct of Mediation Procedures:
If, for any reason, any of the parties (or the Mediation Officer) is unable to participate on the date agreed, the procedure should be rescheduled to the earliest mutually acceptable date. Witnesses, if any, should be kept to a minimum. *(Revised 11/03)*

Realizing that a dispute already exists between the parties, the Mediation Officer should make every effort to encourage a conciliatory atmosphere while ensuring a full discussion of all pertinent facts. The complainant and respondent should be encouraged to appreciate each other's position in the matter and to effect a solution that will eliminate the need for arbitration by the Board's Professional Standards Committee. The parties can agree to a mutual resolution of the matter at any time during the mediation procedure. If, following a thorough discussion of all the pertinent facts, the parties are still unable to resolve the matter, the Mediation Officer may, at the Mediation Officer's discretion, then make a recommendation. Any recommendation for resolution can be oral or in writing and will be provided to both parties at the conclusion of the mediation procedure. The parties can agree to the Mediation Officer's proposed resolution at that time. If neither of the parties desires to give additional consideration to the Mediation Officer's resolution, both parties will be given a specified period of time, not to exceed forty-eight (48) hours, to consider the resolution and to advise the Mediation Officer of their acceptance or rejection of it. If either of the parties rejects the proposed resolution, the mediation procedure will be deemed concluded and the matter will proceed to arbitration. Any party who does not respond to the Mediation Officer within seventy-two (72) hours will be deemed to have rejected the suggested solution and arbitration will proceed. *(Revised 11/96)*

NOTE: When the Board adopts the mediation procedures described in this Manual or develops similar procedures, they should be included in the Board's *Code of Ethics and Arbitration Manual* in whole or by reference. *(Revised 11/96)*

Mediation Procedures

(1) Arbitration request received by the Board*

(2) The Professional Standards Administrator will advise parties of their mediation obligations and options to participate in mediation prior to review of the arbitration request by the Grievance Committee.
Send to complainant:
Request for Mediation form — *Boards may prefer to complete this step by telephone rather than mail*
Agreement to Mediate form
(Set time frame for completed and signed forms to be returned to the Board)

(3) Upon receipt of completed forms from complainant, **send to respondent:**
Notice of Request for Mediation form with attached copy of complainant's completed Request for Mediation form — *Boards may prefer to complete this step by telephone rather than mail*
Agreement to Mediate form
Mediation Officer Selection form (should be sent to both complainant and respondent)
(Set time frame for completed and signed forms to be returned to the Board)

(4) Upon receipt of all completed forms, the Board may assign any Mediator not challenged to serve as the Mediation Officer.
Send to both complainant and respondent:
Notice of Selection of Mediation Officer form

(5) The Mediation Officer should contact the complainant and respondent directly to set an acceptable time and location for the mediation conference.
Send to both complainant and respondent:
Mediation Officer form letter confirming date, time, and location of conference.
(Adequate prior notice should be given parties for scheduling mediation conference — ten [10] days suggested)

(6) (a) **If the mediation conference successfully resolves the dispute:**
Original signed Mediation Resolution Agreement (Form #A-17) should be forwarded to the Board by the Mediation Officer. The Resolution Agreement should be kept in the file with all pertinent records pertaining to that case.

Both the complainant and respondent should receive a copy of the Resolution Agreement.

(b) **If the mediation conference does not successfully resolve the dispute:**
If the parties are unable to resolve their dispute, the Mediation Officer may make the determination that the parties have reached an impasse, and may recommend an equitable solution. The recommendation for resolution can be oral or in writing, and may be provided to both parties at the conclusion of the mediation procedure. (Set time frame for response from parties — not to exceed forty-eight [48] hours)

Any party who does not respond to the Mediation Officer within seventy-two (72) hours will be considered to have rejected the suggested solution.

Mediation Officer should advise the Board that the mediation conference has been terminated without resolution of the dispute.

Mediation Officer will send Termination of Mediation Conference form to Board.

Request for Arbitration will be forwarded to the Board's Grievance Committee for review.

*Boards may also offer disputing parties an opportunity to mediate prior to an arbitration request being filed.

(Amended 11/12)

____

Board or State Association

____

Address City State Zip

Request for Mediation

In the matter of ______________________________ vs. ______________________________

Complainant Respondent

I am requesting mediation with the above-named disputant. There is due, unpaid, and owing to me (or I retain) from the above-named person the sum of $________________. My claim is predicated upon the statement attached, marked Exhibit I and incorporated by reference into this application.

______________________________ ______________________________

Signature of REALTOR® Principal/Authorized Designee Date

______________________________ ______________________________

Type/Print Name Phone

____

Address City State Zip

Form Optional: This may be accomplished by telephone.

(Amended 11/12)

____

Board or State Association

____

Address City State Zip

Notice of Request for Mediation

In the matter of ______________________________ vs. ______________________________

Complainant Respondent

A request for mediation involving the above-named case prior to a hearing of this matter by the Professional Standards Committee of the Board has been received. A copy of the dispute is enclosed. If you wish to participate in the mediation process at this time, please complete the Agreement to Mediate form and return it to the Board office at the address shown on this form by

______________________________. The Agreement must be signed and dated by the REALTOR® principal or his/her

Date

authorized designee. If no response is received from you by the appointed date, the case shall be referred to the Grievance Committee of the Board for determination at its next scheduled meeting.

______________________________ ______________________________

Signature of Professional Standards Administrator Date

Form Optional: This may be accomplished by telephone.

(Amended 11/12)

Mediation Officer Selection Form

In the matter of ____ vs. ____

Complainant   Respondent

The following individuals have agreed to serve as Mediation Officers for disputes between REALTOR® members of the

______________________________ Board of REALTORS®. As a party to this mediation, you have the right to challenge any Mediator that you believe would not be acceptable to serve as the Mediation Officer for your mediation conference. This form must

be returned to the Board office by ______________________________ .

Name: ____

I (will ______) (will not ______ reason______________________________) accept this person as a Mediator for this dispute.

Name: ____

I (will ______) (will not ______ reason______________________________) accept this person as a Mediator for this dispute.

Name: ____

I (will ______) (will not ______ reason______________________________) accept this person as a Mediator for this dispute.

Name: ____

I (will ______) (will not ______ reason______________________________) accept this person as a Mediator for this dispute.

Name: ____

I (will ______) (will not ______ reason______________________________) accept this person as a Mediator for this dispute.

Name: ____

I (will ______) (will not ______ reason______________________________) accept this person as a Mediator for this dispute.

____

Name of REALTOR® Principal/Authorized Designee (Type/Print)

____

Signature of REALTOR® Principal/Authorized Designee   Date

(Adopted 11/11)

Agreement to Mediate

The undersigned agree that they are involved in a contractual dispute defined by Article 17 of the Code or in a specific noncontractual dispute as outlined in Standard of Practice 17-4.

The undersigned agree to submit this dispute to mediation in accordance with the mediation guidelines, as set forth in the *Code of Ethics and Arbitration Manual* of the ______________________________.
Board of REALTORS®

Any Agreement signed by the parties, pursuant to the mediation conference, shall be binding.

As a party to the mediation process I understand and agree as follows:
Parties to mediation may withdraw from the process at any point prior to reaching an agreement. Parties to mediation that do not reach an agreement shall be free to pursue arbitration of the dispute in accordance with the guidelines set forth in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. The parties acknowledge that the mediator is not providing legal representation, legal advice, or legal services, and that the parties are advised of their right to be represented by counsel at the mediation and also of their right to obtain independent legal advice (if counsel are not at the mediation) before signing any final settlement agreement.

Any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Board's Professional Standards Committee. However, if the parties agree to a settlement of the dispute, and the settlement is reduced to writing and has been signed by all of the parties, the matter shall be considered resolved, and shall not be the subject of a subsequent arbitration hearing. In the event that either of the parties fails to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

No aspect of this mediation conference shall be relied upon or introduced as evidence in any ethics, arbitration, judicial, or other proceeding, including, but not limited to: views expressed or suggestions made by a party with respect to a possible settlement of the dispute; admissions made in the course of the mediation; proposals made or views expressed by the Mediator or the response of any party thereto. No privilege shall be affected by disclosures made in the course of mediation. Disclosure of any records, reports, or other documents received or prepared by the Board or Mediation Officer shall not be compelled. Neither the Board or the Mediation Officer shall be compelled to disclose or to testify in any proceeding as to information disclosed or representations made in the course of the mediation or communication to the Mediator in confidence. Neither the Mediation Officer, the ______________ (Board) of REALTORS®, the ______________ (State) Association of REALTORS® nor the NATIONAL ASSOCIATION OF REALTORS® or any of its Member Boards shall be deemed "necessary parties" in any judicial proceedings relating to mediation under this Agreement. The parties acknowledge that the mediation proceedings will not be recorded and that weapons of any type are prohibited.

Are the circumstances giving rise to this request for Mediation the subject of civil or criminal litigation or in any proceeding before the state real estate licensing authority or any other state or federal regulatory or administrative agency? ______Yes ______ No

By my signature on this Agreement to Mediate, I acknowledge my rights and agree to the terms of the mediation procedures as stated above. I hereby affirm that I have the authority to enter into and sign a binding written agreement to settle this dispute.

Complainants:	Respondents:
______________________ Type/Print Name	______________________ Type/Print Name
______________________ Signature Date	______________________ Signature Date
______________________ Address	______________________ Address
______________________ Type/Print Name	______________________ Type/Print Name
______________________ Signature Date	______________________ Signature Date
______________________ Address	______________________ Address

(Revised 11/12)

____

____
Board or State Association

____
Address City State Zip

Notice of Selection of Mediation Officer

In the matter of ________________________________ vs. ________________________________
Complainant Respondent

The above parties are notified that ________________________________ has agreed to serve as the Mediation Officer for your mediation conference. The Mediation Officer or the Board staff will contact you directly to set up the date, time, and location of the mediation conference.

The Mediation Process:

(1) Participation in the mediation process is voluntary.*

(2) Parties to a mediation conference may withdraw from the process at any point prior to reaching an agreement. Should you choose to withdraw from the process prior to reaching an agreement, the complainant is free to pursue arbitration of the dispute in accordance with the guidelines set forth in the *Code of Ethics and Arbitration Manual* of the National Association of Realtors®.

(3) If the parties to the mediation conference agree to a settlement of the dispute, and the settlement is reduced to writing and has been signed by all of the parties, the matter shall be considered resolved, and shall not be the subject of a subsequent arbitration hearing. In the event that either of the parties fail to abide by the terms of the settlement, the matter may not be arbitrated; instead, the other party should be encouraged to have the settlement agreement judicially enforced by a court of competent jurisdiction.

(4) Parties to the mediation may be accompanied by and represented at the conference by legal counsel. If it is your intent to have legal counsel present at the mediation conference, the Mediation Officer or the Board staff should be advised of this fact at least ten (10) days prior to the mediation conference.

(5) Parties to the mediation may agree to a mutual resolution of the matter at any time during the mediation conference. If following a thorough discussion of all the pertinent facts, the parties are still unable to resolve the matter, the Mediation Officer may make a recommendation for the resolution of the dispute. The recommendation for resolution can be oral or in writing and may be provided to both parties at the conclusion of the mediation conference. The parties can agree to the Mediation Officer's proposed resolution at the time it is presented to them. If neither of the parties desire to give additional consideration to the Mediation Officer's resolution, both parties will be given a specified period of time, not to exceed forty-eight (48) hours, to consider the resolution and to advise the Mediation Officer of their acceptance or rejection of the recommended resolution. Failure to respond to the recommended resolution within the specified time period will be deemed as a rejection of the suggested resolution. If either of the parties reject the proposed resolution, the mediation conference will be deemed concluded and the matter will proceed to the Board's Grievance Committee for determination. If the Grievance Committee has previously referred the dispute to the Board's Professional Standards Hearing Panel, the matter will proceed to arbitration.

(6) If the parties to the mediation conference are unable to resolve the dispute, any offers of settlement that were not accepted or any suggested resolution proposed by the Mediation Officer that was not accepted will not be introduced as evidence nor considered in any manner should the matter require arbitration by the Board's Professional Standards Committee.

____
Signature of Professional Standards Administrator Date

*This form may be revised to reflect that mediation of otherwise arbitrable disputes is mandatory.

(Revised 11/11)

Board or State Association

Address City State Zip

Sample Letter Advising of Mediation Officer

To: Send to both the complainant and respondent for mediation conference

Dear ____:

Thank you for agreeing to mediate your dispute with ____.*

Your mediation conference has been scheduled for ____, 20 _______
Time Day and Date

at the ____.
Location and Address

Please advise me by ____ if you have a conflict with this date.
Date

The procedures for a mediation conference are less formal than the procedures for an arbitration hearing conducted by a Board of REALTORS®. Since a mediation conference is not an arbitration proceeding or court action, but rather a structured negotiation to find a mutually acceptable solution to a dispute, it is not necessary for you to present testimony from witnesses. However, if you believe you cannot fully explain your position without a witness, you may ask a witness(es) to be present. Additionally, the decision of whether to be represented by legal counsel at the conference is an individual decision to be made by each of the parties to the dispute.

If it is your intent to have legal counsel or witnesses present, please so advise by _______________________________________ .
Date

This will allow appropriate notice to be provided to all parties to the dispute of your intention to be represented by legal counsel and/or to have witnesses present at the conference.

I may be reached at ____________________________________ if you have any questions with regard to your scheduled mediation
Phone
conference or the mediation process in general. I look forward to the opportunity of assisting you in reaching a mutually acceptable solution to the dispute.

Sincerely,

Professional Standards Administrator

cc: The Mediation Officer

*This form may be revised if the Board of Directors requires mediation of otherwise arbitrable matters.

(Adopted 11/11)

Board or State Association

Address City State Zip

Mediation Resolution Agreement

The undersigned pursuant to the mediation guidelines incorporated into the__________________________________'s
Board or State Association
professional standards procedures, have participated in mediation and agree to the following resolution:

____

____

____

____

____

____

____

The undersigned agree to be bound by the above resolution and waive any and all future rights to submit the dispute to arbitration before the Professional Standards Committee of the ___________________ (Board or State Association) or to litigate the matter. We further hold the ___________________ (Board or State Association) harmless, acknowledge that we were advised of our right to attorney representation at the mediation and attorney review of the Resolution Agreement, and expressly waive any and all liability of the ___________________ (Board or State Association) or claim that we have against the ___________________ (Board or State Association) arising out of the manner in which the ___________________ (Board or State Association) conducted the mediation, or the resolution of the dispute reached as a result of the ___________________ (Board or State Association)'s mediation procedures. Further, if the Resolution Agreement is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney's fees.

____
Name (Type/Print) Signature Date

____
Name (Type/Print) Signature Date

As Mediation Officer of the ___________________ (Board or State Association), I do attest that I was present during the mediation process and that the above resolution agreement was voluntarily entered into by the parties to the dispute.

____
Type/Print Name Signature Date

(Amended 11/19)

Board or State Association

Address City State Zip

Termination of Mediation Conference

In the matter of ____ vs. ____

Complainant Respondent

The above named parties have not been able to resolve their dispute through mediation, and the mediation conference has been terminated.

Name of Mediation Officer (Type/Print)

Signature of Mediation Officer Date

(Amended 11/11)

Part Eleven — Interboard Arbitration Procedures

Introduction: By becoming and remaining a member of the National Association, each Member Board is required to provide and participate in interboard arbitration when arbitrable issues arise between a Board Member and a member of another Board within the state, as defined in Article 17 of the Code of Ethics and Sections 43 and 44 of this Manual. **However, the complainant should be advised that should he voluntarily agree to travel to the Board having jurisdiction over the respondent and submit to arbitration conducted by that Board, that Board shall provide arbitration as requested subject to the provisions of this Manual.** In instances where the State Association does not provide procedures for conducting interboard arbitration, the arbitration should be arranged by joint effort of the two (2) Boards having members involved in an arbitrable issue, and the following procedures shall apply. *(Revised 11/96)*

Initiation of procedures: Interboard arbitration is initiated by the written request of a REALTOR® to the Professional Standards Administrator of the Board of which the REALTOR® is a member, who shall, in turn, arrange interboard arbitration with the other Board. Where a written interboard arbitration agreement exists between two (2) or more Boards, the determination as to whether an arbitrable matter exists shall be made pursuant to those procedures. Where no agreement exists between Boards, interboard arbitration may take place provided that the Grievance Committees of each Board determine that a properly arbitrable matter exists. Appeals of arbitration requests dismissed by the Grievance Committee and alleged misclassification of an issue as being subject to either voluntary or mandatory arbitration shall be considered by the Board of Directors of the Board whose Grievance Committee's decision is being challenged pursuant to the existing procedures of that Board. *(Revised 11/98)*

✍ **Fee deposit and arbitration agreement:** The request for interboard arbitration shall be accompanied by a deposit not to exceed $500, which shall go toward the costs of arbitration as determined by the panel, and by a signed arbitration agreement, which may be in the form of Specimen Form #A-1, **Part Thirteen** of this Manual, or in any other appropriate form provided or permitted by law. *(Revised 11/96)*

Interboard arbitration involving parties in Boards distant from each other may involve costs including travel expenses of the arbitration panel and other expenses of the arbitration. *(Revised 5/06)*

✍ Boards should establish a filing fee for interboard arbitration that may be the same as or different from filing fees for arbitration not conducted pursuant to **Part Eleven**, provided that the total cost that may be charged any party, including any filing fee, may not exceed $500. Boards administering arbitration pursuant to **Part Eleven** should agree prior to any hearing which Board will retain the respective parties' filing fees. *(Revised 5/06)*

Selection of panel: Each Board participating in the interboard arbitration procedure shall select one member of the arbitration panel from its Professional Standards Committee. The Chair of each Board's Professional Standards Committee shall agree upon the third member of the panel. The panel shall select its Chairperson. The Professional Standards Administrator of the Board of which the Chairperson is a member shall serve as Professional Standards Administrator of the panel. *(Revised 11/03)*

All parties have the right to challenge the qualifications of any arbitrator so selected upon showing good and sufficient cause why the arbitrator should not serve. Questions concerning the qualification of any arbitrator shall be determined by the President of the Board from which the arbitrator was selected.

Hearings and the organization and procedures incident thereto shall be governed by the *Code of Ethics and Arbitration Manual* of the National Association as adapted to conform to the provisions of applicable state law and the optional provisions adopted by the Professional Standards Administrator and Chairperson of the panel's Board. *(Adopted 11/98)*

Arbitration request and response: The Professional Standards Administrators of the Boards involved with the interboard arbitration shall ensure that the panel Professional Standards Administrator receives all documents related to the arbitration request. The panel Professional Standards Administrator may require the complainant to submit sufficient copies of the arbitration request and related documents for each member of the panel and the respondent or respondents. Within _________ days after the interboard arbitration panel has been formed, the panel Professional Standards ✍ Administrator shall send a copy of the arbitration request to the respondent, informing the respondent that he may file a written response with the panel Professional Standards Administrator (if the respondent has not already received a copy of the arbitration request and had an opportunity to submit a response) within twenty-one (21) days from the date of the notification in which the request for arbitration was transmitted to him, including sufficient copies for each Hearing Panel member and the complainant. If the arbitration request has already been provided to the respondent and a response solicited, the panel Professional Standards Administrator shall obtain the response from the Board which requested it and ensure that the complainant receives a copy. The panel Professional Standards Administrator may require the respondent to submit sufficient copies of the response for each member of the panel and the complainant or complainants. Any response shall be accompanied by a signed arbitration agreement, which may be in the form of Specimen Form #A-4, **Part Thirteen** of this Manual, or in any other appropriate form provided or permitted by law, and a deposit not to exceed $500, which shall go toward costs of such arbitration if so determined by the arbitration panel, or shall be returned as determined by the panel. *(Revised 11/14)*

The panel Professional Standards Administrator shall then schedule a hearing consistent with the procedures established in the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS®. Interboard arbitration shall not proceed unless signed arbitration agreements and deposits have been received from the complainant and respondent. *(Revised 11/95)*

Right of interboard arbitration panel to release members from obligation to arbitrate: If the arbitration panel determines that, because of the amount involved or the legal complexity of the dispute, the dispute should not be arbitrated, it shall advise the parties, the arbitration shall terminate, and the parties shall be relieved of their obligation to arbitrate. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable, and the parties shall be relieved of their obligation to arbitrate. If no interboard hearing on the merits is held, any deposits made by the parties shall be returned to them. *(Revised 11/98)*

Further, if the panel determines that an arbitrable matter exists but it is not subject to mandatory arbitration, neither party may be compelled to arbitrate, and the arbitration shall terminate unless all parties voluntarily agree to take part and abide by the decision.

Either party has twenty (20) days to appeal from the date of notice that the panel declined to continue the proceeding. The materials presented to the Hearing Panel when the Hearing Panel made its decision to dismiss together with any party's written rationale challenging the panel's reasons for dismissal and the dismissal itself will be presented to the appeal panel comprised of a minimum of five (5) members (who did not previously sit in review of the arbitration request) from the parties' Boards to be appointed by the Boards' Presidents. The request for arbitration and any attachments thereto cannot be revised, modified, or supplemented. The parties do not have the right to appear at the hearing before the appeal panel. *(Revised 5/07)*

Place, date, and time of hearing: The panel Chairperson shall designate the date, time, and place of the hearing. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Each party shall be given at least twenty-one (21) days' prior notice of the hearing, but appearance at the hearing waives the right to such notice. The arbitrators may recess the hearing from time to time as necessary and, on request of a party or upon the arbitrators' own motion, may postpone the hearing for not more than thirty (30) days, unless otherwise agreed to by the parties. *(Revised 11/14)*

Conduct of hearing: The Chairperson shall preside at the hearing, which shall not be bound by the strict rules of evidence applicable to judicial tribunals, but by the Outline of Procedure for Arbitration Hearing found in **Part Twelve** of this Manual, and by the Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing, also in **Part Twelve** of this Manual.

Testimony and documentary evidence: Parties to disputes may testify on their own behalf and may present testimony of witnesses and introduce documentary evidence. Any party may examine and cross-examine witnesses, and at the request of any party or on its own motion, the panel, at its discretion, may exclude witnesses or evidence.

Legal counsel: Parties may, at their own expense, have legal counsel present during the hearing, provided they notify the panel and the other party, in writing, of their intention to do so at least fifteen (15) days prior to the date fixed for the hearing, including counsel's name, address, and phone number. The panel may have legal counsel present. *(Revised 11/97)*

The arbitration hearing: The following procedure is to be followed in conducting the hearing:*

(a) Prior to the giving of any testimony, all witnesses shall be sworn or affirmed by the panel Chairperson.

(b) Each party or his attorney shall be given the opportunity of making an opening statement.

(c) Witnesses shall be present only as necessary to present their testimony.

(d) The complainant may present evidence and give testimony as deemed applicable to the arbitration by the Hearing Panel. No testimony may be admitted related to the character or general business reputation of any party unless such testimony has a direct bearing on the matter being heard.

(e) The parties to the dispute shall present to the arbitrators, in writing, such statements and proof as they deem necessary or desirable, or as the arbitrators request. Proof may be submitted in the form of affidavits or in any other acceptable form. The arbitration panel may require that statements be verified by affidavit or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The panel shall receive and consider any evidence it deems material and proper, including evidence of accountants and other experts. Each party is responsible for the expenses of expert witnesses he calls.

(f) At the conclusion of direct examination, the opposing party or his counsel may cross-examine the witness.

(g) When both parties have concluded their examination or cross-examination of a witness, the arbitrators may examine the witness.

(h) Upon completion of all testimony, each party or his attorney may summarize the proceedings to the arbitration panel. The complainant will open the summation and the respondent will close the summation.

*Such hearing shall be conducted according to the Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing, in **Part Twelve** of this Manual.

(i) Thereafter, the parties shall be excused and the matter will stand submitted.

✍ **Recordation:** Any party (may/may not), at his own expense, have a court reporter present, or may record the proceeding, and, if transcribed, shall furnish a transcript to the panel. The panel may also cause the hearing to be transcribed or recorded on its own motion.

Adjournment: The panel may adjourn the hearing from time to time as necessity or convenience dictates.

Settlement: The parties to the arbitration may settle the dispute by agreement at any time. In such event, the arbitration proceedings shall be terminated.

The award: The award of the arbitrators (Form #A-12, **Part Thirteen** of this Manual) shall be made as soon as feasible after the evidence is presented. The award shall be in writing and signed by the arbitrators, or a majority of them, and when so signed and transmitted to each of the parties shall be final and binding, and shall not be subject to review or appeal except as required by other provisions of this Manual or by applicable state law. Any procedural review request (which must be limited to issues of due process) shall be filed with the panel Professional Standards Administrator for consideration by a special review panel comprising an equal number of Directors from each Board, chosen by the respective Board President, which shall select its own Chairperson who will preside but will not vote. (This ensures an odd number of panelists.) Dissemination of the award shall be limited to the parties involved, the Board of Directors of each Board of REALTORS®, and legal counsel and staff on a need-to-know basis. *(Revised 11/14)*

The non-prevailing party shall, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*. Failure to either pay the award or deposit the funds as provided for in Section 53, The Award, may subject the nonprevailing party to discipline, including but not limited to termination of Board membership and/or MLS access/use, consistent with Section 53. The tribunal reviewing an allegation that a nonprevailing party either did not timely pay the award or deposit a like amount will be composed of an equal number of Directors from each Board, chosen by the respective Board President, which shall select its own Chairperson who will preside but not vote. *(Adopted 05/15)*

Costs of arbitration: Interboard arbitration may involve travel and necessary out-of-pocket expenses by the arbitrators. The arbitrators shall receive reimbursement of travel and out-of-pocket expenses incurred in connection with their service as arbitrators. Expenses of the arbitrators and all other expenses, including the panel's use of legal counsel and recordation or transcription of the hearing, shall be borne by the Boards involved as agreed in advance of the hearing. *(Revised 5/06)*

Refusal to arbitrate: In the event a complainant alleges that the respondent has improperly refused to submit a dispute to arbitration (or to mediation if the respondent's Board requires REALTORS® [principals] to mediate otherwise arbitrable disputes pursuant to Article 17),* the allegation shall be brought before a tribunal of five (5) members selected by the Board President from members of the respondent's Board of Directors. The procedures for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact will be to decide whether the party has refused to submit an arbitrable matter to arbitration (or to mediation if required) in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the tribunal may direct implementation of appropriate sanction, including suspension or expulsion of the member from the local Board of REALTORS®. The decision of the tribunal shall be final and binding and is not subject to further review by the State Association or any local Board. *(Revised 11/11)*

Enforcement: If a member fails to comply with an award or the terms of a mediated settlement agreement, the recipient to whom the award has been rendered by the arbitration panel or the beneficiary of a settlement agreement reached by the parties in mediation, shall be advised by the panel to seek judicial enforcement and request reimbursement of all legal costs incurred in seeking such enforcement. At the discretion of the Board of Directors of the Board of which the award recipient, or the beneficiary of a settlement agreement, is a member, the Board may support the request for judicial enforcement in the court and, at the further discretion of the Board of Directors, reimburse the award recipient/beneficiary for costs incurred in seeking such enforcement if the courts do not award reimbursement of such costs. *(Revised 11/14)*

Special note concerning interstate arbitration: The interboard arbitration method may also be utilized for the conduct of arbitration between Board Members of different Boards in different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established by the arbitration panel chosen and to pay all costs of such arbitration as may be directed by the panel, provided that the state in which each of the parties to the arbitration resides, and the state in which the arbitration is held, permits binding arbitration. Or, alternatively, if a Board Member voluntarily agrees to travel to the Board having jurisdiction of the other Board Member in another state and to submit to arbitration by that Board, the Board shall provide arbitration as requested if it deems the dispute an arbitrable matter and further subject to the provisions of **Part Ten,** Section 45 of this Manual, which sets forth the right of the Board to decline to arbitrate a dispute.

*Requiring REALTORS® (principals) to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in a Board's governing documents. Enabling bylaw provisions can be found at www.nar.realtor (see *Model Bylaws*).

Part Twelve — Conduct of an Arbitration Hearing

An arbitration hearing must be conducted in a manner which is fair to all parties. This means that the parties must know their rights and responsibilities in advance so they may properly prepare and present their positions. Procedures are required to assure an orderly hearing. But procedures may and should be modified as interests of justice and truth dictate. However, in modifying established procedures, care must be taken to assure that the rights and interests of all parties are protected. For this reason, variation from prescribed procedures should be reviewed with Board counsel and counsel for the parties prior to implementation.

Following are six (6) outlines. The first and second are outlines of procedural information of interest and concern primarily to the parties involved. This information should be provided to them well in advance of any hearing (Form #A-10 and Form #A-10a, as appropriate, **Part Thirteen**). The third outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over arbitration hearings. The fourth outline is primarily of interest to Hearing Panels and particularly to the Chairpersons who preside over interboard arbitration hearings. The fifth and sixth outlines are primarily of interest to tribunals and particularly to Chairpersons who preside over procedural review requests and interboard procedural review requests, respectively.

Outline of Procedure for Arbitration Hearing

________________________________ **Board of REALTORS®**

✍ **State of** ____

(To be transmitted in advance to both parties.)

Remote Testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 11/21)*

✍ **Postponement of hearing:** Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing. *(Revised 11/14)*

✍ **Recording the hearing:** The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties. *(Revised 11/21)*

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel. *(Revised 11/21)*

Due process procedure: (Chairperson's Procedural Guide for the Conduct of an Arbitration Hearing is available in the *Code of Ethics and Arbitration Manual*.)

The hearing will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The arbitration request will be read into the record.

(3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.

(4) Opening statements first by complainant and then by respondent, briefly explaining the party's basic position.

(5) The parties will be given an opportunity to present evidence and testimony in their behalf and they may call witnesses. All parties appearing at a hearing may be called as a witness without advance notice. *(Revised 11/14)*

(6) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.

(7) The panel members may ask questions at any time during the proceedings.

(8) The Chairperson may exclude any questions which he or she deems irrelevant or argumentative.

(9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.

(10) Adjournment of hearing.

(11) The Hearing Panel will go into executive session to decide the case. *(Revised 11/12)*

Settlement: Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement. *(Revised 11/16)*

Award in arbitration hearing: The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (setting forth only the amount of the award) and be signed by the Arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Board.

Use of legal counsel: A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Outline of Procedure for an Arbitration Hearing Involving a Request and a Counter-Request

________________________________ **Board of REALTORS®**

State of ____

(To be transmitted in advance to both parties.)

Remote Testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually. *(Revised 11/21)*

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the rescheduled hearing date. *(Revised 11/14)*

✍ **Recording of the hearing:** The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties. *(Revised 11/21)*

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel. *(Revised 11/21)*

Due process procedure: (Chairperson's Procedural Guide of an Arbitration Hearing and a Counter Arbitration Request is available online at nar.realtor.)

The hearing will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The arbitration request and counter-request will be read into the record.

(3) The testimony of all parties and witness(es) will be sworn or affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at a hearing may be called as a witness without advance notice. *(Revised 11/14)*

(4) Complainant/counter-respondent will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . . .) and refuting the contention that any monies are owed.

(5) Respondent/counter-complainant will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . . .) and refuting the contention that any monies are owed.

(6) Complainant/counter-respondent presents his case and defense by offering testimony and evidence from himself and/or his witness(es) to support the contention that monies are owed to the complainant by the respondent and refuting the contention that monies are owed to the counter-complainant.

   (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

   (b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the contention that monies are owed to her by the counter-respondent and refuting the contention that she owes monies to the complainant.

   (a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support his position as a complainant/counter-respondent.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support her position as respondent/counter-complainant.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondent and/or of the complainant's/counter-respondent's witness(es).

(11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/ counter-complainant and/or their respective witness(es).

(12) When the parties and Hearing Panel members have no further questions, the complainant/counter-respondent and respondent/counter-complainant (respectively) may present uninterrupted closing statements.

(13) The Chair will then adjourn the hearing.

(14) The Hearing Panel will go into executive session to decide the case.

Settlement: Parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement. *(Revised 11/16)*

Award in arbitration hearing: The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (setting forth only the amount of the award) and be signed by the arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Board.

Testimony: Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which he or she deems irrelevant or argumentative.

Use of legal counsel: A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised all matters discussed are strictly confidential.

(Amended 11/21)

Chairperson's Procedural Guide: Conduct of an Arbitration Hearing

________________________________ **Board of REALTORS®**

State of ____

(Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed.)

(Ask all parties [including witnesses] to come into the hearing room.)

Display: Board banner and the American flag

Seating arrangements: See **Part Thirteen,** Form #A-16 of this Manual for recommended seating arrangements.

Start promptly: Rap gavel to open meeting.

Chairperson's opening statement and conduct of hearing: Ladies and gentlemen, I now call this hearing to order. The Professional Standards Committee is charged with holding appropriate hearings for the ____________________________ Board of REALTORS® in accordance with the procedures as set forth in the Board's bylaws in matters concerning alleged unethical conduct of a Board Member or Members, or in the arbitration of a business dispute arising out of the real estate business and as defined in the bylaws of the Board. The body meeting here is an impartial panel of the Professional Standards Committee that has been selected and called here today to ascertain the truth in the particular matter at hand, which is an arbitration proceeding, and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding is to be clearly distinguished from an arbitration proceeding and should be treated as a completely separate matter. The particular matter to be considered by this panel at this time is an arbitration proceeding.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the___________________ Board of REALTORS® and has been duly appointed by the Board President and approved by the Board of Directors. At this time, I would like to introduce members of this panel.

(1) My name is ____________________________________, and I will serve as Chairperson of this panel.

(2) The other members of this panel are:
_____________________, _________________________, _____________________, and ____________________.

(3) Present at this hearing is ___________________________, the complainant, and his/her sales associate(s), _________.

(If the complainant is accompanied by an attorney and/or witnesses, they should be introduced at this time.)

_____________________, _________________________, _____________________, and ____________________.

(If the complainant is represented by legal counsel, and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If none, have the respondent sign a statement to that effect.)

(4) Also present at this hearing is _______________________, the respondent, and his/her sales associate(s), ___________.

(If the respondent is accompanied by an attorney and/or witnesses, they should be introduced at this time.)

_____________________, _________________________, _____________________, and ____________________.

(If the respondent is represented by legal counsel, and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If none, have complainant sign a statement to that effect.)

(5) Also present at this hearing is _______________________, the recording Professional Standards Administrator for the ________________________ Board of REALTORS®, and (if appropriate) _____________, the court reporter present to transcribe these proceedings.

(Or, alternatively: This hearing is being mechanically recorded.)

(If an attorney representing the Board is present, he/she should be introduced at this time.)

____.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purpose of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Basis of hearing: This hearing is to arbitrate a business dispute arising out of the real estate business in accordance with the request of ____________________________, that he/she be awarded a commission or part of a commission on the sale of __________________. The request for arbitration is as follows:

(Read the amount and nature of the dispute into the record.)

Any prior offers of settlement or proposed resolutions of the case, during mediation or otherwise, will not be considered by the Hearing Panel.

However, the parties are encouraged to settle their dispute at any time during or after the hearing. If the parties wish to discuss settlement during the hearing, they may ask for a recess. The parties, with the assistance of their respective counsel, if any, will determine the terms of the settlement agreement.

This panel is not governed by the technical rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the panel that is fair to all of the parties. The panel is governed and directed by the bylaws of the _______ Board of REALTORS® and the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following has been generally accepted and ruled on by this panel as to the procedures to be followed during this hearing.

(1) All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during this hearing on the relevance of testimony being given or questions being directed to any party or his/her representative or to witnesses providing testimony. All parties and witnesses will be asked to swear or affirm that testimony given is the truth to the best of their knowledge.

(If legal counsel is not present, proceed to 3.)

(2) A party may be represented by legal counsel. However, no party may refuse to directly respond to requests for information or questions addressed to him/her by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of his/her client if the panel desires direct testimony. Counsel is present to advise and consult with his/her client, and to speak for him/her subject to appropriate rulings or determinations by the panel. This panel will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.

(3) The panel may rule at any time on the admissibility of evidence. As Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter and date.

(4) The members of this panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties or their representatives, or by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Board counsel concerning such rulings.

(5) At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn or make appropriate affirmation in lieu of being sworn.

(The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.)

Swearing: Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear . . . "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?" Let the record show that all parties have answered in the affirmative.

(And/or if needed)

Affirmation: Raise your right hand and, following the question I will pose, answer in the affirmative if you do so affirm . . . "Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?" Let the record show that ____________ has/have answered in the affirmative.

(At this time, the Chairperson should excuse any witnesses and ask them to wait outside until called, and ask the remaining parties to be seated.)

Outline of procedure for hearing: Both the complainant and the respondent were mailed a copy of the Outline of Procedure for an Arbitration Hearing (**Part Thirteen,** Form #A-10 of this Manual). Did each of you receive the Outline?

(If yes) Let the record show that both the complainant and respondent have stated that they did receive the Outline.

(If no, the party should be given a copy of the Outline and the Chairperson should determine whether that party has any objections to proceeding.)

Do you have any questions concerning the Outline of Procedure?

(If none) Let the record show that neither the complainant nor the respondent have any questions concerning the Outline of Procedure for an Arbitration Hearing.

We shall now proceed with the hearing.

Opening statement by parties or attorneys: Each party or the party's attorney-at-law shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party's position. You will have an opportunity to present your entire case at a later time during this hearing.

Complainant's opening statement

Respondent's opening statement

Presentation of full case by complainant: The complainant will now state his/her case and present any evidence or witnesses that he/she may desire.

Cross-examination by respondent

Questions from panel members

Presentation of full case by respondent: The respondent will now state his/her case and present any evidence or witnesses that he/she may desire.

Cross-examination by complainant

Questions from panel members

Closing statement by complainant: At this time, both the complainant and the respondent will be given an opportunity to make a summary or closing statement if they so desire. The complainant's closing statement will be heard first.

Closing statement by respondent

Closing statement by Panel Chairperson: Do each of you feel that this hearing has been conducted fairly?

(If yes) Let the record show that both the complainant and the respondent have indicated that they feel this hearing has been conducted fairly.

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

(If yes) Let the record show that both the complainant and the respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

(If any party answers "no," ask him/her to state any concern and, if there's any merit to the concern, take steps to remedy any possible deficiency.)

Confidential nature of hearing: All persons present are advised that the award of this panel is considered confidential. It will be available only to members of this panel, to the parties, to counsel and staff as required or as otherwise specified in the *Code of Ethics and Arbitration Manual*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Hearing Panel (or a majority of them), shall be served upon the parties to the dispute. The parties will be notified of the decision within the required time after this hearing is adjourned. You are reminded that any recording or transcription that may be made of these proceedings can only be used for the purpose of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

At this point, parties may be offered an additional opportunity to settle. Associations offering this opportunity may read the following: Before we adjourn the hearing of this panel, we would like to give both parties fifteen (15) minutes to discuss any settlement or resolution of their dispute that they would like to consider prior to the Hearing Panel entering executive session. The parties (and their counsel, if any) will be provided a private space to meet and discuss any resolution. If settlement is reached, the parties will execute an agreement and the arbitration process will be terminated. If settlement is not reached, the panel will reconvene in executive session and determine the award.

Adjournment: There being no further business to be considered in this hearing, this portion of the hearing stands adjourned.

Proceeding following hearing — executive session: *(After adjournment, the panel will remain in executive session and determine the award. The panel will follow explicitly the procedure set forth in the* Code of Ethics and Arbitration Manual *as to opportunity for procedural review. Boards should consider having Board counsel review awards prior to issuance. This will serve to protect the Board by minimizing vulnerability to litigation.)*

(Revised 11/16)

Chairperson's Procedural Guide: Conduct of an Interboard Arbitration Hearing

________________________________ **Board of REALTORS®**

State of ____

(Ask the recording Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all appropriate blanks have been completed.)

(Ask all parties [including witnesses] to come into the hearing room.)

Display: Board banner and the American flag

Seating arrangements: See **Part Thirteen,** Form #A-16 of this Manual for recommended seating arrangements.

Start promptly: Rap gavel to open meeting.

Chairperson's opening statement and conduct of hearing: Ladies and gentlemen, I now call this hearing to order. Professional Standards Committees are charged with conducting hearings for their respective Boards of REALTORS® in accordance with the procedures as set forth in the Boards' bylaws in matters concerning alleged unethical conduct by a Board Member or Members, or in the arbitration of business disputes arising out of the real estate business as defined in the bylaws of the respective Boards. The body meeting here is an impartial panel of Professional Standards Committee members who have been selected and called today to ascertain the truth in the particular matter at hand, which is the subject of an interboard arbitration proceeding, and to render a decision on the testimony and evidence presented. It is to be noted that an ethics proceeding is to be clearly distinguished from an arbitration proceeding and the two should be treated as completely separate matters. The particular matter to be considered by this panel at this time is an interboard arbitration proceeding.

The Professional Standards Committee is a body duly constituted under the authority of the bylaws of the respective Boards of REALTORS® whose members have been duly appointed by their Board Presidents and approved by their Boards of Directors. At this time, I would like to introduce the members of this panel.

(1) My name is ______________________________; I am a member of the ______________________________ Board of REALTORS®, and I will serve as Chairperson of this panel.

(2) The other members of this panel are: ________________, a member of the ________________ Board of REALTORS®, and ______________________________, a member of the __________________ Board of REALTORS®.

(3) Present at this hearing is __________________________, the complainant, and his/her sales associate(s) __________ ____.

(If the complainant is accompanied by an attorney, and/or witnesses, they should be introduced at this time.)

____________________, ________________________, ____________________, and ______________________.

(If the complainant is represented by legal counsel, and/or accompanied by witnesses, confirm that the respondent was notified in advance. If not, ask if there is an objection. If none, have the respondent sign a statement to that effect.)

(4) Also present at this hearing is ______________________, the respondent, and his/her sales associate(s), __________ ____.

(If the respondent is accompanied by an attorney and/or witnesses, they should be introduced at this time.)

____________________, ________________________, ____________________, and ______________________.

(If the respondent is represented by legal counsel, and/or accompanied by witnesses, confirm that the complainant was notified in advance. If not, ask if there is an objection. If none, have complainant sign a statement to that effect.)

(5) Also present at this hearing is ____________________, the recording Professional Standards Administrator for the ____________________ Board of REALTORS®, and (if appropriate) __________________, the court reporter present to transcribe these proceedings.

(Or, alternatively: This hearing is being mechanically recorded.)

(If an attorney representing the Board is present, he/she should be introduced at this time.)

____.

The parties are specifically advised that any recording or transcription that may be made of these proceedings can only be used for purpose of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

Basis of hearing: This hearing is to arbitrate a business dispute arising out of the real estate business in accordance with the request of ____________________________ that he/she be awarded a commission or part of a commission on the sale of ____.

The request for arbitration is as follows:

(Read the amount and nature of the dispute into the record.)

Any prior offers of settlement or proposed resolutions of the case, during mediation or otherwise, will not be considered by the Hearing Panel.

However, the parties are encouraged to settle their dispute at any time during or after the hearing. If the parties wish to discuss settlement during the hearing, they may ask for a recess. The parties, with the assistance of their respective counsel, if any, will determine the terms of the settlement agreement.

This panel is not dealing with questions of law, and it is not governed by the rules of evidence which may apply in courts. This panel will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision that is fair to all of the parties. The panel is governed and directed by the bylaws of the respective Boards of REALTORS® and the Code of Ethics of the NATIONAL ASSOCIATION OF REALTORS®. The panel determines its own rules of evidence and its own procedures to be followed with objectives of equity and due process. The following are the procedures that will be followed during this hearing.

(1) All parties or their representatives to these proceedings will have a full opportunity to be heard on matters relevant to the issue. The panel may rule at any time during this hearing on the relevance of testimony being given or on questions being directed to any party or their representative or to witnesses providing testimony. All parties and witnesses will be asked to swear or affirm that testimony given is the truth to the best of their knowledge.

(If no legal counsel is present, proceed to paragraph 3.)

(2) A party may be represented by legal counsel. However, no party may refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination or other grounds which the panel deems appropriate. In this connection, the panel is not required to accept the statements of counsel as being the statements of their client if the panel desires direct testimony. Counsel is present to advise and consult with their client, and to speak for them subject to appropriate rulings or determinations by the panel. This panel will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings.

(3) The panel may rule at any time on the admissibility of evidence. As Chairperson, I will act as keeper of the evidence introduced at this hearing and mark each with an exhibit identification number or letter and date.

(4) The members of this panel are authorized, individually, to ask questions as they deem pertinent and significant at any time during this hearing. To preserve order, I will rule on questions or testimony by the parties and their representatives, and by witnesses in these proceedings. If deemed necessary, I will consult with the members of the panel and with Board counsel concerning such rulings.

(5) At this time, I request that all persons present in the room who expect to testify at this hearing stand and be sworn or make appropriate affirmation in lieu of being sworn.

(The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.)

Swearing: Raise your right hand and, following the question I will pose, answer in the affirmative if you do so swear . . . "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?" Let the record show that all parties have answered in the affirmative.

(And/or if needed)

Affirmation: Raise your right hand and, following the question I will pose, answer in the affirmative if you do so affirm . . . "Do you affirm that the testimony you are about to give in this proceeding shall be the truth, the whole truth, and nothing but the truth?" Let the record show that ___________________ has/have answered in the affirmative.

(At this time, the Chairperson should excuse any witnesses and ask them to wait outside until called, and ask the remaining parties to be seated.)

Outline of procedure for hearing: Both the complainant and the respondent were provided with a copy of the Outline of Procedure for an Arbitration Hearing (**Part Thirteen,** Form #A-10 of this Manual). Did each of you receive the Outline?

(If yes) Let the record show that both the complainant and respondent did receive the Outline.

(If a party responds that he has not received the Outline, the party should be given a copy and asked if he has any objection to proceeding.)

Do you have any questions concerning the Outline of Procedure?

(If none) Let the record show that neither the complainant nor the respondent have any questions concerning the Outline of Procedure for an Arbitration Hearing.

We shall now proceed with the hearing.

Opening statement by parties or attorneys: Each party or the party's attorney-at-law shall be given an opportunity for an opening statement which shall briefly outline the basic premise of the party's position. You will have an opportunity to present your entire case at a later time during this hearing.

Complainant's opening statement

Respondent's opening statement

Presentation of full case by complainant: The complainant will now state his/her case and present any evidence or witnesses that he/she may desire.

Cross-examination by respondent

Questions from panel members

Presentation of full case by respondent: The respondent will now state his/her case and present any evidence or witnesses that he/she may desire.

Cross-examination by complainant

Questions from panel members

Closing statement by complainant: At this time both the complainant and the respondent will be given an opportunity to make a summary or closing statement if they so desire. The complainant's closing statement will be heard first.

Closing statement by respondent

Closing statement by Panel Chairperson: Do you feel that this hearing has been conducted fairly?

(If yes) Let the record show that both the complainant and the respondent have indicated that they feel this hearing has been conducted fairly.

Have each of you had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination?

(If yes) Let the record show that both the complainant and the respondent have indicated that they have had an adequate opportunity to testify, present evidence and witnesses, and conduct cross-examination.

(If any party answers "no," ask him/her to state any concerns and, if there's any merit to the concern, take steps to remedy any possible deficiency)

Confidential nature of hearing: All persons present are advised that the award of this panel is considered confidential. It will be available only to members of this panel, to the parties, to counsel, and staff as required or as otherwise specified in the *Code of Ethics and Arbitration Manual*. Upon final action by the Hearing Panel in an arbitration proceeding, the decision, when signed by the members of the Hearing Panel (or a majority of them), shall be served upon the parties to the dispute. The parties will be notified of the decision within the required time after this hearing is adjourned. You are reminded that any recording or transcription that may be made of these proceedings can only be used for the purpose of procedural review, and any other use, including use in other ethics or arbitration hearings, is expressly prohibited.

At this point, parties may be offered an additional opportunity to settle. Associations offering this opportunity may read the following: Before we adjourn the hearing of this panel, we would like to give both parties fifteen (15) minutes to discuss any settlement or resolution of their dispute that they would like to consider prior to the Hearing Panel entering executive session. The parties (and their counsel, if any) will be provided a private space to meet and discuss any resolution. If settlement is reached, the parties will execute an agreement and the arbitration process will be terminated. If settlement is not reached, the panel will reconvene in executive session and determine the award.

Adjournment: There being no further business to be considered in this hearing, this portion of the hearing stands adjourned.

Proceeding following hearing — executive session: *(After adjournment, the panel remains in executive session to determine the award, if any. The panel will follow the procedure set forth in the* Code of Ethics and Arbitration Manual *as to the opportunity for procedural review. Boards should consider having Board counsel review awards prior to issuance. This will serve to protect the Board by minimizing vulnerability to litigation.) (Revised 11/12)*

(Revised 11/16)

Chairperson's Procedural Guide: Conduct of a Procedural Review Hearing (Arbitration)

________________________________ Board of REALTORS®

State of ____

(Ask the Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed. Also note that procedural reviews are not to be recorded.)

(Ask all parties to come into the hearing room.)

Display: Board banner and the American flag

Seating arrangements: See **Part Thirteen,** Form #A-16 in this Manual for recommended seating arrangements.

Start promptly: Rap gavel to open meeting.

Chairperson's opening statement: Ladies and gentlemen, I now call this procedural review hearing to order. The professional standards procedures of the __________________ Board of REALTORS® provide for the right to a procedural review of the arbitration hearing procedures used in arbitration hearings. Both the complainant and/or the respondent in an arbitration hearing have the right to request a procedural review. The request for procedural review will be heard by (the Board of Directors) (or) (a panel of Directors appointed by the President) (or) (the Board's Executive Committee), hereinafter referred to as the Procedural Review Hearing Tribunal.

Basis of this procedural review: The particular matter to be considered by this Procedural Review Hearing Tribunal is a request for procedural review of the arbitration hearing procedures used in an arbitration hearing conducted on ______________________, 20______. The original arbitration Hearing Panel was composed of ________________________, ________________________, ________________________, __________________________________, and was chaired by _____________________. The basis of the original arbitration hearing was a Request and Agreement to Arbitrate filed by ________________________ and ______________________, the complainant(s), against ___________________________ and ________________________________, the respondent(s), claiming that a dispute arising out of the real estate business existed between the complainant(s) and the respondent(s). The Award of Arbitrators from the original arbitration hearing was as follows:

*(Read the Award of Arbitrators [**Part Thirteen,** Form #A-12 of this Manual].)*

Prior to the original arbitration hearing, the arbitration request was reviewed by (the Board's Grievance Committee) (or) (a panel of the Board's Grievance Committee members) and referred to the Board's Professional Standards Committee for a hearing.

Authority: The Procedural Review Hearing Tribunal present here today is a body duly constituted under the authority of the bylaws of the ___________________________________ Board of REALTORS®.

Introduction of the Procedural Review Hearing Tribunal: At this time, I would like to introduce the members of this Procedural Review Hearing Tribunal. My name is ____________________, and I will serve as Chairperson. The other members of this Procedural Review Hearing Tribunal are ________________________, _________________________, ________________________, _________________________, ________________________, _________________________, ________________________ and _______________________.

Disqualification: Anyone who was a party to the original arbitration hearing, a member of the Grievance Committee present during the meeting when the arbitration request was reviewed, a member of the original arbitration Hearing Panel, or who was otherwise involved in this matter prior to the procedural review request is disqualified from serving on this Procedural Review Hearing Tribunal. Furthermore, anyone who is related by blood or marriage to any party to the original arbitration hearing, who is an employer, partner, employee, or is associated in business with any of the parties to the original arbitration hearing is also disqualified. I will now ask the members of the Procedural Review Hearing Tribunal if they know of any reason why they should be disqualified.

(If none) The members of the Procedural Review Hearing Tribunal have not indicated any reason why they are not qualified to serve. Although the parties have been previously notified of their right to challenge members of this Procedural Review Hearing Tribunal, I will now ask the parties if they are aware of any reason why any member of this Procedural Review Hearing Tribunal is not qualified to serve.

(If none) The parties have not indicated any reason why any member of this Procedural Review Hearing Tribunal is not qualified to serve.

Additional introductions: Also present at this procedural review hearing is ______________________, the complainant in the original arbitration hearing; ______________________, the respondent in the original arbitration hearing; ________________________, the original Arbitration Hearing Panel Chairperson; and ______________________ _________, the Professional Standards Administrator for the ____________________________ Board of REALTORS®.

(If any attorneys are present, they should be introduced at this time.)
________________________, _________________________, _________________________, and ______________________.

Appeal limitations: In this procedural review hearing we will consider the arguments of ____________________________, hereinafter referred to as the appellant, who filed the Request for Procedural Review. The basis for the procedural review is limited to alleged procedural deficiencies or other irregularities the appellant believes constitute a deprivation of due process (e.g., fraud, coercion, bias, prejudice, evident partiality, etc.). The procedural review is further limited to the basis (bases) set forth in writing in the Request for Procedural Review, which is as follows.

*(Read the Request for Procedural Review [Form #A-13 in **Part Thirteen** of this Manual].)*

Outline of procedure: At this time I would like to explain the procedure for this procedural review hearing. First, the appellant will have an opportunity to explain the basis (bases) upon which he/she is requesting that the Award of Arbitrators be overturned. Next, the original arbitration Hearing Panel Chairperson (or a representative from the original panel) will have an opportunity to respond to the allegations raised by the appellant. Then, any of the other parties to the original arbitration hearing will have the opportunity to explain why the Award of Arbitrators should not be overturned. At any time during this proceeding, members of the Procedural Review Hearing Tribunal may ask questions; however, parties have no right of cross-examination. Finally, following the procedural review hearing, the Procedural Review Hearing Tribunal will go into executive session to render a decision. Do any of the parties have any questions regarding the outline of procedure?

(If none) None of the parties has any questions regarding the outline of procedure.

Guidelines: This Procedural Review Hearing Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in courts. This Procedural Review Hearing Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Procedural Review Hearing Tribunal that is fair to all of the parties. After the Procedural Review Hearing Tribunal has heard all of the evidence and testimony, we will go into executive session to render our decision. The decision will be based solely upon the arguments, evidence, and testimony offered during this procedural review hearing. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. This Procedural Review Hearing Tribunal may rule at any time during this hearing on the relevance of testimony being given. All parties giving testimony will be asked to swear or affirm that testimony given is the truth to the best of their knowledge. A party may be represented by legal counsel. This Procedural Review Hearing Tribunal need not accept the statements of counsel as being the statements of their clients if it desires direct testimony. Counsel is present to advise and consult with their clients, and to speak for them subject to appropriate rulings or determinations by this Procedural Review Hearing Tribunal. This Procedural Review Hearing Tribunal will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Procedural Review Hearing Tribunal or any party to the proceedings.

Swearing: At this time I will request that all persons present in the room who expect to testify at this procedural review hearing stand and be sworn or make appropriate affirmation in lieu of being sworn. (The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.) Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so swear. "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?"

(If yes) All parties have answered in the affirmative. Please be seated.

(And/or if needed)

Affirmation: Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so affirm. "Do you affirm that the statements you are about to make at this procedural review hearing are the truth, the whole truth, and nothing but the truth?"

(If yes) All parties have answered in the affirmative. Please be seated.

The procedural review hearing: We shall now proceed with the procedural review hearing.

Presentation by the appellant: At this time, the appellant may explain the basis (bases) upon which he/she is requesting that the Award of Arbitrators be overturned. However, no new evidence shall be received except as such new evidence may bear upon the claim of deprivation of due process.

Rebuttal by the original arbitration Hearing Panel Chairperson: At this time, the original arbitration Hearing Panel Chairperson will have an opportunity to explain why the Award of Arbitrators should be upheld by this Procedural Review Hearing Tribunal.

Testimony of other parties to the original arbitration hearing: At this time, any other parties to the original arbitration hearing will have an opportunity to explain why the Award of Arbitrators should be upheld by the Procedural Review Hearing Tribunal. Any party testifying must restrict his/her discussion to the issues raised in the Request for Procedural Review.

Questions from panel members: The members of this panel are authorized to ask questions at any time during this procedural review.

Confirmation of fairness/opportunity to testify: Do each of you feel that this procedural review hearing has been conducted fairly?

(If yes) All parties to this procedural review hearing have indicated that they feel this procedural review hearing has been conducted fairly.

Have each of you had an adequate opportunity to state why you believe that the original Award of Arbitrators should or should not be upheld by this Procedural Review Hearing Tribunal?

(If yes) The parties have indicated that they have had an adequate opportunity to state why they believe the original Award of Arbitrators should or should not be upheld by this Procedural Review Hearing Tribunal.

Closing statements: The decision of this Procedural Review Hearing Tribunal is final. Before we adjourn this procedural review hearing, all persons present are advised that the final determination of this Procedural Review Hearing Tribunal is considered confidential. Upon final action by this Procedural Review Hearing Tribunal, the Professional Standards Administrator shall disseminate to the complainant and the respondent in the original arbitration hearing, the Chairperson and members of the original arbitration Hearing Panel, and Board legal counsel such notice of the action as the Board President deems appropriate under the circumstances.

Adjournment: There being no further business to be considered in this procedural review hearing, this portion of the procedural review hearing stands adjourned.

Executive session: The Procedural Review Hearing Tribunal will now go into executive session to render its final decision, which will be based solely on the arguments, evidence, and testimony offered at the procedural review hearing.

Procedural note: The sole issue for the Procedural Review Hearing Tribunal to decide is whether the arbitration procedures utilized in rendering the Award of Arbitrators afforded all parties due process. If the Procedural Review Hearing Tribunal determines that the original arbitration hearing process was defective in any significant way, then the Award of Arbitrators will be invalidated and the matter will be referred to a different arbitration Hearing Panel for a new hearing or, alternatively, the Procedural Review Hearing Tribunal may release the parties from their obligation to arbitrate if it concludes that the Board will be unable to impanel an impartial arbitration Hearing Panel. *(Adopted 4/92)*

Chairperson's Procedural Guide: Conduct of a Procedural Review Hearing (Interboard Arbitration)

_______________________________ **Board of REALTORS®**

State of ____

(Ask the Professional Standards Administrator to make sure that the names of all parties present for the hearing have been added to this Guide and that all the appropriate blanks have been completed. Also note that procedural reviews are not to be recorded.)

(Ask all parties to come into the hearing room.)

Display: Board banner and the American flag

Seating arrangements: See **Part Thirteen,** Form #A-16 in this Manual for recommended seating arrangements.

Start promptly: Rap gavel to open meeting.

Chairperson's opening statement: Ladies and gentlemen, I now call this procedural review hearing to order. The Professional Standards procedures of the ____________ (name of Board or Association) and the ________________ (name of Board or Association) provide for the right to a procedural review of the arbitration hearing procedures used in arbitration hearings. Both the complainant and/or the respondent in an arbitration hearing have the right to request a procedural review. The request for procedural review will be heard by duly appointed members from the Boards of Directors of the __________________ (name of Board or Association), and the ________________________, (name of Board or Association) hereinafter referred to as the Procedural Review Hearing Tribunal.

Basis of this procedural review: The particular matter to be considered by this Procedural Review Hearing Tribunal is a request for procedural review of the arbitration hearing procedures used in an arbitration hearing conducted on ________________, 20_____. The original arbitration Hearing Panel was composed of: _______________________, _______________________, _______________________, _______________________,_ _______________________, _______________________ __________ and was chaired by _______________________ __________. The basis of the original arbitration hearing was a Request and Agreement to Arbitrate filed by _______________ __________________ and _____________________________ ______, the complainant(s), against _____________________ and ___________________, the respondent(s), claiming that a dispute arising out of the real estate business existed between the complainant(s) and the respondent(s). The Award of Arbitrators from the original arbitration hearing was as follows:

*(Read the Award of Arbitrators [**Part Thirteen,** Form #A-12 of this Manual] into the record.)*

Prior to the original arbitration hearing, the arbitration request was reviewed by the Grievance Committees of each Board and referred for a hearing consistent with **Part 11** of this Manual.

Authority: The Procedural Review Hearing Tribunal present here today is a body duly constituted under the authority of the bylaws of the __________________________ (name of Board or Association) and the ________________________ (name of Board or Association).

Introduction of the Procedural Review Hearing Tribunal: At this time, I would like to introduce the members of this Procedural Review Hearing Tribunal. My name is ___________, and I will serve as Chairperson. The other members of this Procedural Review Hearing Tribunal are:

________________________, ________________________
________________________, and _____________________.

Disqualification: Anyone who was a party to the original arbitration hearing, a member of the Grievance Committee present during the meeting when the arbitration request was reviewed, a member of the original arbitration Hearing Panel, or who was otherwise involved in this matter prior to the procedural review request is disqualified from serving on this Procedural Review Hearing Tribunal. Furthermore, anyone who is related by blood or marriage to any party to the original arbitration hearing, who is an employer, partner, employee, or is associated in business with any of the parties to the original arbitration hearing is also disqualified. I will now ask the members of the Procedural Review Hearing Tribunal if they know of any reason why they should be disqualified.

(If none) The members of the Procedural Review Hearing Tribunal have not indicated any reason why they are not qualified to serve. Although the parties have been previously notified of their right to challenge members of this Procedural Review Hearing Tribunal, I will now ask the parties if they are aware of any reason why any member of this Procedural Review Hearing Tribunal is not qualified to serve.

(If none) The parties have not indicated any reason why any member of this Procedural Review Hearing Tribunal is not qualified to serve.

Additional introductions: Also present at this procedural review hearing is ______________________, the complainant in the original arbitration hearing; ______________________, the respondent in the original arbitration hearing; ________________________, the original Arbitration Hearing Panel Chairperson; and ___________________, the Professional Standards Administrator for the ________________________ Board of REALTORS®.

(If any attorneys are present, they should be introduced at this time.)

________________________, ________________________
________________________, and _____________________.

Appeal limitations: In this procedural review hearing we will consider the arguments of ____________________, hereinafter referred to as the appellant, who filed the Request for Procedural Review. The basis for the procedural review is limited to alleged procedural deficiencies or other irregularities the appellant believes constitute a deprivation of due process (e.g., fraud, coercion, bias, prejudice, evident partiality, etc.). The procedural review is further limited to the basis (bases) set forth in writing in the Request for Procedural Review, which is as follows:

(Read the Request for Procedural Review [Form #A-13 in ***Part Thirteen*** *of this Manual] into the record.)*

Outline of procedure: At this time I would like to explain the procedure for this procedural review hearing. First, the appellant will have an opportunity to explain the basis (bases) upon which he/she is requesting that the Award of Arbitrators be overturned. Next, the original arbitration Hearing Panel Chairperson (or a representative from the original panel) will have an opportunity to respond to the allegations raised by the appellant. Then, any of the other parties to the original arbitration hearing will have the opportunity to explain why the Award of Arbitrators should not be overturned. At any time during this proceeding, members of the Procedural Review Hearing Tribunal may ask questions; however, parties have no right of cross-examination. Finally, following the procedural review hearing, the Procedural Hearing Tribunal will go into executive session to render a decision. Do any of the parties have any questions regarding the outline of procedure?

(If none) None of the parties has any questions regarding the outline of procedure.

Guidelines: This Procedural Review Hearing Tribunal is not dealing with questions of law and is not governed by the technical rules of evidence which may apply in courts. This Procedural Review Hearing Tribunal will seek to determine all ascertainable and relevant facts pertaining to the matter under consideration to arrive at a peer judgment and decision by the Procedural Review Hearing Tribunal that is fair to all of the parties. After the Procedural Review Hearing Tribunal has heard all of the evidence and testimony, we will go into executive session to render our decision. The decision will be based solely upon the arguments, evidence, and testimony offered during this procedural review hearing. All parties or their representatives to these proceedings will be allowed a full opportunity to be heard on matters relevant to the issue. This Procedural Review Hearing Tribunal may rule at any time during this hearing on the relevance of testimony being given. All parties giving testimony will be asked to swear or affirm that testimony given is the truth to the best of their knowledge. A party may be represented by legal counsel. This Procedural Review Hearing Tribunal need not accept the statements of counsel as being the statements of their clients if it desires direct testimony. Counsel is present to advise and consult with their clients, and to speak for them subject to appropriate rulings or determinations by this Procedural Review Hearing Tribunal. This Procedural Review Hearing Tribunal will countenance no effort by any party or by counsel to any party to harass, intimidate, coerce, or confuse the Procedural Review Hearing Tribunal or any party to the proceedings.

Swearing: At this time I will request that all persons present in the room who expect to testify at this procedural review hearing stand and be sworn or make appropriate affirmation in lieu of being sworn. (The Chairperson should determine if any of the parties prefer affirmation in lieu of being sworn.) Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so swear. "Do you swear that the statements you are about to make at this hearing are the truth, the whole truth, and nothing but the truth so help you God?"

(If yes) All parties have answered in the affirmative. Please be seated.

(And/or if needed)

Affirmation: Please stand, raise your right hand and, following the question I pose, answer in the affirmative if you do so affirm. "Do you affirm that the statements you are about to make at this procedural review hearing are the truth, the whole truth, and nothing but the truth?"

(If yes) All parties have answered in the affirmative. Please be seated.

The procedural review hearing: We shall now proceed with the procedural review hearing.

Presentation by the appellant: At this time, the appellant may explain the basis (bases) upon which he/she is requesting that the Award of Arbitrators be overturned. However, no new evidence shall be received except as such new evidence may bear upon the claim of deprivation of due process.

Rebuttal by the original arbitration Hearing Panel Chairperson: At this time, the original arbitration Hearing Panel Chairperson will have an opportunity to explain why the Award of Arbitrators should be upheld by this Procedural Review Hearing Tribunal.

Testimony of other parties to the original arbitration hearing: At this time, any other parties to the original arbitration hearing will have an opportunity to explain why the Award of Arbitrators should be upheld by the Procedural Review Hearing Tribunal. Any party testifying must restrict his/her discussion to the issues raised in the Request for Procedural Review.

Questions from panel members: The members of this panel are authorized to ask questions at any time during this procedural review.

Confirmation of fairness/opportunity to testify: Do each of you feel that this procedural review hearing has been conducted fairly?

(If yes) All parties to this procedural review hearing have indicated that they feel this procedural review hearing has been conducted fairly.

Have each of you had an adequate opportunity to state why you believe that the original Award of Arbitrators should or should not be upheld by this Procedural Review Hearing Tribunal?

(If yes) The parties have indicated that they have had an adequate opportunity to state why they believe the original Award of Arbitrators should or should not be upheld by this Procedural Review Hearing Tribunal.

Closing statements: The decision of this Procedural Review Hearing Tribunal is final. Before we adjourn this procedural review hearing, all persons present are advised that the final determination of this Procedural Review Hearing Tribunal is considered confidential. Upon final action by this Procedural Review Hearing Tribunal, the Professional Standards Administrator shall disseminate to the complainant and the respondent in the original arbitration hearing, the Chairperson and members of the original Arbitration Hearing Panel, and Board legal counsel such notice of the action as the Board President deems appropriate under the circumstances.

Adjournment: There being no further business to be considered in this procedural review hearing, this portion of the procedural review hearing stands adjourned.

Executive session: The Procedural Review Hearing Tribunal will now go into executive session to render its final decision, which will be based solely on the arguments, evidence, and testimony offered at the procedural review hearing.

Procedural note: The sole issue for the Procedural Review Hearing Tribunal to decide is whether the arbitration procedures utilized in rendering the Award of Arbitrators afforded all parties due process. If the Procedural Review Hearing Tribunal determines that the original arbitration hearing process was defective in any significant way, then the Award of Arbitrators will be invalidated and the matter will be referred to a different arbitration Hearing Panel for a new hearing or, alternatively, the Procedural Review Hearing Tribunal may release the parties from their obligation to arbitrate if it concludes that the Board will be unable to impanel an impartial arbitration Hearing Panel.

(Revised 11/22)

Part Thirteen — Specimen Forms

The Manual refers to certain forms used in connection with arbitration proceedings conducted under it. Following are specimens of such forms.

They should not be used until they are first reviewed by Board counsel to assure that they conform to state law and to any special requirements established by the Board. (NOTE: The State Association may wish to have State Association legal counsel review the contents of the Manual, including the Specimen Forms, to adapt it to comply with state law, and to recommend adoption of the amended Manual by all local Boards within the state.) The Specimen Forms are intended to provide a format and may require further adaptation and modification by the local Board prior to implementation and use.

After such review and modification as necessary, the local Board or State Association may add to the forms the appropriate identification data of the Board and reproduce them in quantities desired by the Board.

General Instructions and Information for Filing and Replying to Arbitration Requests

(1) Arbitration requests must be typewritten and submitted with a sufficient number of copies to enable the Board to provide one to each respondent plus one copy for the Board's records. Any reply must be typewritten and submitted with a sufficient number of copies to enable the Board to provide one to each complainant plus one copy for the Board's records. Additional copies of the arbitration request and reply should be furnished by the complainant and respondent as requested by the Professional Standards Administrator. If the complainant is a member of the public, extra copies of the arbitration request should not be requested.

(2) Arbitration requests will be referred to the Professional Standards Administrator, and by the Professional Standards Administrator to the Chairperson of the Grievance Committee. If the Grievance Committee finds the matter to constitute a proper cause of action, it will be referred to the Professional Standards Administrator to arrange a hearing; if not found to constitute a proper cause of action, it will be returned to the complainant with the decision of the Grievance Committee, together with information advising the complainant of the procedures by which the Grievance Committee's decision may be appealed to the Board of Directors.

(3) If there is to be a hearing, respondent will have fifteen (15) days after service of copy of the arbitration request to reply. Copy of the reply will be sent to complainant, the Board President, and the Professional Standards Committee Chairperson. The date for hearing will be set and all parties will be notified of the date and place of hearing at least twenty-one (21) days in advance.

(4) If no response is filed to the arbitration request within fifteen (15) days from when the request for response was transmitted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the request. Complainant, the Board President, and the Professional Standards Committee Chairperson will be advised that no reply has been filed. *(Revised 05/15)*

(5) All parties may be represented by legal counsel, provided that notice of intention to be represented is transmitted to all other parties and to the Hearing Panel at least fifteen (15) days prior to the hearing. Failure to provide timely notice may result in a continuance of the hearing.

(6) It is the responsibility of each party to arrange for his witnesses to be present at the hearing. All parties appearing at the hearing may be called as witnesses without advance notice. *(Revised 11/14)*

(7) Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. *(Adopted 5/15)*

(8) Either party may file with the Professional Standards Administrator, within ten (10) days from the date the names of the members of the Professional Standards Committee are transmitted to the parties, a written request for disqualification of any potential member of the Hearing Panel for any of the following reasons:

   (a) is related by blood or marriage to either complainant or respondent

   (b) is an employer, partner, or employee, or in any way associated in business with either complainant or respondent

   (c) is a party to the hearing, or a party or a witness in another pending case involving complainant or respondent

   (d) knows any reasons acceptable to the Hearing Panel or tribunal which may prevent him from rendering an impartial decision

(9) The notice of hearing will contain names of members of the tribunal who will hear the case and should be accompanied by an "Outline of Procedure for Arbitration Hearing" and the Arbitration Guidelines (including the Worksheet). Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. *(Revised 11/14)*

(10) The parties shall not discuss the case with any member ofthe Hearing Panel or the Board of Directors at any time prior to announcement of a decision in the case.

(11) No hearing will be held in the absence of a complainant. An arbitration hearing may (depending on state law and the option selected by the Board) proceed in the absence of the respondent.

(Revised 05/15)

Form #A-1

____

Board or State Association

____

Address City State Zip

Request and Agreement to Arbitrate

(1) The undersigned, by becoming and remaining a member of the ________________________________ Board of REALTORS® (or Participant in its MLS), has previously consented to arbitration through the Board under its rules and regulations.

(2) I am informed that each person named below is a member in good standing of the Board (or Participant in its MLS), or was a member of said Board of REALTORS® at the time the dispute arose.

(3) A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me (or my firm) and (list all persons and/or firms you wish to name as respondents to this arbitration):*

____, REALTOR® principal ____

Name Address

____, REALTOR® principal ____

Name Address

____

Firm Address

(NOTE: Arbitration is generally conducted between REALTORS® [principals] or between firms comprised of REALTOR® principals. Naming a REALTOR® [principal] as respondent enables the complainant to know who will participate in the hearing from the respondent's firm; naming a firm may increase the likelihood of collecting any resulting award.)

(4) There is due, unpaid and owing to me (or I retain) from the above-named persons the sum of $_________________________. My claim is predicated upon the statement attached, marked Exhibit I and incorporated by reference into this application. The

disputed funds are currently held by ____.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) I request and consent to arbitration through the Board in accordance with its *Code of Ethics and Arbitration Manual* (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Board"). I agree to abide by the arbitration award and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

(6) I enclose my check in the sum of $_________________________ for the arbitration filing deposit.**

(7) I understand that I may be represented by legal counsel, and that I should give written notice no less than fifteen (15) days before the hearing of the name, address, and phone number of my attorney to all parties and the Board. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

*Complainants may name one or more REALTOR® principals or a firm comprised of REALTOR® principals as respondent(s). Or, complainants may name REALTOR® principals and firms as respondents.

**Not to exceed $500.

(8) Each party must provide a list of the names of witnesses he intends to call at the hearing to the Board and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. The following REALTOR® nonprincipal (or REALTOR ASSOCIATE® nonprincipal) affiliated with my firm has a financial interest in the outcome of the proceeding and may be called as a witness, and has the right to be present throughout the hearing:

____.

All parties appearing at a hearing may be called as a witness without advance notice.

(9) I declare that this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

Date(s) alleged dispute took place ______________________________________

(10) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of transmittal of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.

(11) Are the circumstances giving rise to this arbitration request the subject of civil litigation? __________ Yes __________ No

(12) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

(13) Address of the property in the transaction giving rise to this arbitration request:

____

(14) The sale/lease closed on: ____

(15) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

Complainant(s):

____
Name (Type/Print) Signature of REALTOR® Principal Date

____
Address

____
Telephone Email

____
Name (Type/Print) Signature of REALTOR® Principal Date

____
Address

____
Name of Firm* Address

____
Telephone Email

*In cases where arbitration is requested in the name of a firm comprised of REALTORS® (principals), the request must be signed by at least one of the REALTOR® principals of the firm as a co-complainant.

(Revised 11/15)

Form #A-2

____

Board or State Association

____

Address City State Zip

Request and Agreement to Arbitrate (Nonmember)

(1) The undersigned agrees and wants to submit to arbitration before a Hearing Panel of the __________________________ Board of REALTORS® with the understanding that the arbitration will be conducted pursuant to the *Code of Ethics and Arbitration Manual* of the Board (or, alternatively, "in accordance with the professional standards procedures set forth in the Board's bylaws"). The undersigned acknowledges having had the opportunity to review the Board's procedures or having been provided with a copy of the procedures.

(2) I am informed that each person named below is a member in good standing of the Board (or Participant in its MLS), or was a member of said Board of REALTORS® at the time the dispute arose.

(3) A dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics exists between me and (list all persons and/or firms you wish to name as respondents to this arbitration. Naming a REALTOR® [principal] as respondent enables the complainant to know who will participate in the hearing from the respondent's firm; naming a firm may increase the likelihood of collecting any resulting award.):*

____________________________________, REALTOR® principal ____________________________________

Name Address

____________________________________, REALTOR® principal ____________________________________

Name Address

____

Firm Address

(4) There is due, unpaid, and owing to me (or I retain) from the above-named persons the sum of $__________________________. My claim is predicated upon the statement attached, marked Exhibit I and incorporated by reference into this application.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) The undersigned confirms that execution of this Agreement is wholly voluntary and, pursuant to this Agreement, agrees and promises to abide absolutely by the award of the Hearing Panel. In the event of adverse decision, I agree to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

(5) In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

(6) I enclose my check in the sum of $__________________________ for the arbitration filing fee deposit.**

(7) I understand that I may be represented by legal counsel, and that I should give written notice no less than fifteen (15) days before the hearing of the name, address, and phone number of my attorney to all parties and the Board. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

Each party must provide a list of the names of witnesses he intends to call at the hearing to the Board and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. All parties appearing at the hearing may be called as witnesses without advance notice.

(8) I declare that this application and the allegations contained herein are true and correct to the best of my knowledge and belief and this request for arbitration is filed within one hundred eighty (180) days after the closing of the transaction, if any, or within one hundred eighty (180) days after the facts constituting the arbitrable matter could have been known in the exercise of reasonable diligence, whichever is later.

Date(s) alleged dispute took place: __________________________

*Complainants may name one or more REALTOR® principals or a firm comprised of REALTOR® principals as respondent(s). Or, complainants may name REALTOR® principals and firms as respondents.

**Not to exceed $500.

(9) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of the receipt of the Grievance Committee's decision to file a written appeal of the decision. Only those materials that the Grievance Committee had at the time of its determination may be considered with the appeal by the Board of Directors.

(10) Are the circumstances giving rise to this arbitration request the subject of civil litigation? __________ Yes _________ No

(11) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

(12) Agreements to arbitrate are irrevocable except as otherwise provided under state law.

Complainant(s):

Name (Type/Print) Signature of complainant Date

Address

Telephone Email

Name (Type/Print) Signature of complainant Date

Address

Telephone Email

(Revised 11/18)

Form #A-3

____
Board or State Association

____
Address City State Zip

Notice to Respondent (Arbitration)

In the case of ______________________________ vs. ______________________________
Complainant Respondent

to ____, respondent.

Attached hereto is a copy of a request for arbitration which names you as respondent, as filed with this Board and referred to a Hearing Panel as a business dispute as defined in Article 17 of the Code of Ethics or as provided for in the *Code of Ethics and Arbitration Manual* of this Board.

Please be advised that, under the bylaws of the Board, you have fifteen (15) days from the date of this notification in which to mail or transmit your reply at the office of the Board at the address above.

Your reply must be typewritten, with original and ____________ copies for this office, and must be signed and dated.

Respectfully submitted,

______________________ ______________________________ Professional Standards Administrator
Type/Print Signature

____
Board or State Association

Dated: ________________________, 20________

(Revised 11/14)

Form #A-4

____
Board or State Association

____
Address City State Zip

Response and Agreement to Arbitrate

To the **Professional Standards Committee:**

Complainant(s)	Respondent(s)
______________________	______________________
______________________	______________________

(1) The undersigned, by becoming and remaining a member of the Board of REALTORS® (or Participant in its MLS), has previously consented to arbitration through the Board under its rules and regulations.

(2) I am a member of the __________________ Board of REALTORS® or Participant in its MLS (or was a member of the Board at the time the dispute arose).

(3) I acknowledge the existence of a dispute arising out of the real estate business as defined by Article 17 of the Code of Ethics but deny any indebtedness as claimed.

(4) My denial is predicated upon the statement attached marked Exhibit A, which is hereby incorporated by reference into this response.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) (Complete if applicable) Affirmatively, I claim that a monetary dispute arising out of the real estate business exists between the parties wherein there is due to me the sum of $_______________. My claim is predicated upon the statement attached, marked Exhibit B, which is hereby incorporated by reference into this response.

(6) I consent to arbitration through the Board in accordance with its *Code of Ethics and Arbitration Manual* (alternatively, "in accordance with the professional standards procedures set forth in the bylaws of the Board"). I agree to abide by the arbitration award and, if I am the non-prevailing party, to, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual*.

In the event I do not comply with the arbitration award and it is necessary for any party to this arbitration to obtain judicial confirmation and enforcement of the arbitration award against me, I agree to pay the party obtaining such confirmation the costs and reasonable attorney's fees incurred in obtaining such confirmation and enforcement.

(7) I enclose my check in the sum of $_______________ for the arbitration filing fee deposit.*

(8) I understand that I may be represented by legal counsel, and that I should give written notice no less than fifteen (15) days before the hearing of the name, address and phone number of my attorney to all parties and the Board. Failure to provide this notice may result in a continuance of the hearing, if the Hearing Panel determines that the rights of the other party(ies) require representation.

Revised (05/15)

*Not to exceed $500.

Each party must provide a list of the names of witnesses he intends to call at the hearing to the Board and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. The following REALTOR® nonprincipal (or REALTOR ASSOCIATE® nonprincipal) affiliated with my firm has a financial interest in the outcome of the proceeding and may be called as a witness and has the right to be present throughout the hearing:

____.

All parties appearing at a hearing may be called as a witness without advance notice.

(9) I declare that the information provided with this response is true and correct to the best of my knowledge and belief.

(10) If either party to an arbitration request believes that the Grievance Committee has incorrectly classified the issue presented in the request (i.e., mandatory or voluntary), the party has twenty (20) days from the date of receipt of the Grievance Committee's decision to file a written appeal of the decision using Form A-20. Only those materials that the Grievance Committee had at the time of its determination along with the party's rationale challenging the Grievance Committee's decision may be considered with the appeal by the Board of Directors. I understand that should I contend this matter is not arbitrable, I have an opportunity to petition the arbitration Hearing Panel to dismiss the arbitration request.

(11) Important note related to arbitration conducted pursuant to Standard of Practice 17-4 (1) or (2): Where arbitration is conducted between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2), the amount in dispute and the amount of any potential resulting award is limited to the amount paid to the respondent by the listing broker, seller, or landlord and any amount credited or paid to a party to the transaction at the direction of the respondent.

(12) To be completed where arbitration is between two (or more) cooperating brokers pursuant to Standard of Practice 17-4 (1) or (2): The compensation paid to me or to my firm by the listing broker, seller, or landlord, and any amount credited or paid to any party to the transaction at my direction is $ ______ (amount of compensation paid to me or my firm by the listing broker, seller, or landlord) and $______ (paid or credited to any party at my direction).

Respondent(s):

Name (Type/Print) Signature of REALTOR® Principal Date

Address

Telephone Email

Name (Type/Print) Signature of REALTOR® Principal Date

Address

Telephone Email

(Amended 05/15)

Form #A-5

____
Board or State Association

____
Address City State Zip

Grievance Committee Request for Information (Arbitration Request)

To ____,

named by ____ as respondent.

Attached hereto is a copy of a request for arbitration which names you as respondent, as filed with this Board and referred to the Grievance Committee for review, in accordance with Section 47 of the Board's *Code of Ethics and Arbitration Manual*.

The Grievance Committee requests the respondent provide a written response to the Request and Agreement to Arbitrate within fifteen (15) days of this notice being transmitted. If no response is filed within the time allotted, the Grievance Committee shall make its determination as to whether an arbitration hearing should be scheduled based upon the information set forth in the Request for Arbitration.

Respectfully submitted,

______________________ ______________________ Professional Standards Administrator
Type/Print Signature

____
Board or State Association

Dated: ______________________, 20________

(Revised 11/16)

Form #A-6

Board or State Association

Address City State Zip

Response to Grievance Committee Request for Information

To the **Grievance Committee** of the:

Board or State Association

Filed ________________________________, 20__________

Complainant(s) Respondent(s)

In a matter of arbitration of a business dispute as defined in Article 17 of the Code of Ethics or in the *Code of Ethics and Arbitration Manual* of the Board.

Respondent(s) replies and substantiates such reply by the following attached statement.

This is true and correct to the best knowledge and belief of the undersigned. I (we) declare that to the best of my (our) knowledge and belief, the statements contained in this reply are true and correct.

Respondent(s):

Name (Type/Print) Signature of REALTOR® Principal Date

Address

Telephone Email

Name (Type/Print) Signature of REALTOR® Principal Date

Address

Telephone Email

(Revised 11/09)

Form #A-7

____
Board or State Association

____
Address City State Zip

Notice of Right to Challenge Tribunal Members*

Notice is given herewith to parties in the matter of ______________________________ vs. ______________________________, an arbitration proceeding, that a party has a right to challenge the qualifications of any individual who may be appointed to serve on a Hearing Panel or the Board of Directors. A list of such individuals is provided below. If you wish to challenge the qualifications of any of the individuals listed who may be appointed to sit on the Tribunal, please indicate by checking the appropriate blank, and return this form or a copy of same with a letter (or enclosed Form #A-8, if preferred) to the (Professional Standards Committee Chairperson) (Professional Standards Administrator) explaining your reason ("cause") for challenge. If your reason is deemed sufficient to support your challenge, the individual challenged will not be appointed to the Tribunal. Pursuant to Section 27, Qualification for Tribunal, challenges must be filed with the Board within ten (10) days from the date the list of names is transmitted.

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

____ Challenge: _______ Yes _______ No

______________________________ ______________________________
Party's Name (Type/Print) Party's Signature Date

______________________________ ______________________________
Party's Name (Type/Print) Party's Signature Date

(Revised 11/14)

*Members of arbitration Hearing Panels or the Board of Directors. Does not include members of a Grievance Committee. See Section 27, Qualifications for Tribunal, *Code of Ethics and Arbitration Manual*.

Form #A-8

____
Board or State Association

____
Address City State Zip

Challenge to Qualifications by Parties to Arbitration Proceeding

I (we), as party to the matter in ______________________________ vs. ______________________________, hereby challenge the qualification of the following named individual(s) who may be appointed as a member(s) of the Tribunal* for the following reasons. (NOTE: Unsubstantiated challenges will be disregarded.)**

Panel Member Challenged: ______________________________

Reason: ____

____

____

Panel Member Challenged: ______________________________

Reason: ____

____

____

Panel Member Challenged: ______________________________

Reason: ____

____

____

Type/Print Name of Party:______________________________

Signed: ____ Date: ________________

Type/Print Name of Party:______________________________

Signed: ____ Date: ________________

Type/Print Name of Party:______________________________

Signed: ____ Date: ________________

*Members of arbitration Hearing Panels or the Board of Directors.

**Use additional pages as required to list additional challenges to the qualifications of individuals who have been or may be selected to serve as member(s) of a Tribunal in an arbitration proceeding to which you are a party.

Form #A-9

____
Board or State Association

____
Address City State Zip

Official Notice of Hearing (Arbitration)

In the case of ______________________ vs. ______________________
Complainant Respondent

Above parties are hereby notified:

(1) The Chairperson of the Hearing Panel has designated the ______________________, 20______
Day Month Year

__________ A.M./P.M. at ______________________
Time Place of Hearing

as the time for hearing the above case, which is a hearing concerning the arbitration of a business dispute as defined in Article 17 of the Code of Ethics or in the *Code of Ethics and Arbitration Manual* of the bylaws of the Board. Attached are the Arbitration Guidelines, Appendix II to **Part Ten,** for your review.

(2) You are hereby notified to appear at the time and place so designated.* Although testimony provided in person before a Hearing Panel is preferred, parties and witnesses to arbitration hearings may be permitted to participate in hearings by teleconference or videoconference at the discretion of the Hearing Panel Chair.

(3) The members of the Hearing Panel appointed to hear the case are:

______________________ ______________________

______________________ ______________________

______________________ ______________________

(4) Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances.

(5) Either party may be represented by counsel, and each party is requested to provide written notice of an intention to have counsel present fifteen (15) days before the hearing to the Board and the other party including counsel's name, address, and phone number. Failure to provide this notice will not invalidate a party's right to legal representation, but may result in a continuance of the hearing if the Hearing Panel determines that the rights of any other party require representation by counsel.

(6) Each party must provide a list of the names of the witnesses he intends to call at the hearing to the Board and to all other parties not less than fifteen (15) days prior to the hearing. Each party shall arrange for his witnesses to be present at the time and place designated for the hearing. All parties appearing at the hearing may be called as witnesses without advance notice.

(7) The parties shall not discuss the case with any member of the Hearing Panel or the Board of Directors prior to the hearing or after hearing and prior to announcement of the decision.

(8) The parties to an arbitration proceeding are encouraged to settle the issue between them by joint agreement at any time and shall provide written notice of such settlement to the Professional Standards Administrator.

Respectfully submitted,

______________________ ______________________, Professional Standards Administrator
Type/Print Signature

____
Board or State Association

Dated: ______________________, 20______

*Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing.

(Revised 11/15)

Form #A-10

Board or State Association

Address City State Zip

Outline of Procedure for Arbitration Hearing

(To be Transmitted in Advance to Both Parties with Arbitration Guidelines and Worksheet)

Remote testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually.

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Permission can be given by the Chairperson. All parties shall be advised of the date of the rescheduled hearing.

Recording the hearing: The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording should be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties. *(Revised 11/21)*

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of the submission. Evidence submitted at the hearing will be evaluated for admissibility by the hearing panel.

Due process procedure: (Chairperson's Procedural Guide of an Arbitration Hearing is available in the *Code of Ethics and Arbitration Manual*.)
The hearing procedures will be:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The arbitration request will be read into the record.

(3) The testimony of all parties and witnesses will be sworn or affirmed. All witnesses will be excused from the hearing except while testifying.

(4) Opening statement first by complainant and then by respondent, briefly explaining the party's basic position.

(5) The parties will be given an opportunity to present evidence and testimony on their behalf and they may call witnesses. All parties appearing at a hearing may be called as a witness without advance notice.

(6) The parties and their legal counsel will be afforded an opportunity to examine and cross-examine all witnesses and parties.

(7) The panel members may ask questions at any time during the proceedings.

(8) The Chairperson may exclude any question ruled to be irrelevant or argumentative.

(9) Each side may make a closing statement. The complainant will make the first closing statement and the respondent will make the final closing statement.

(10) Adjournment of hearing.

(11) The Hearing Panel will go into executive session to decide the case.

Settlement: The parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement.

Award in arbitration hearing: The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing (setting forth only the amount of the award by the panel) and signed by the arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Board.

Use of legal counsel: A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from date of adjournment to enable the party to obtain alternate counsel provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised that all matters discussed are strictly confidential.

Form #A-10a

Board or State Association

Address City State Zip

Outline of Procedure for Arbitration Hearing Involving a Request and a Counter-Request

(To be Transmitted in Advance to Both Parties with Arbitration Guidelines and Worksheet)

Remote testimony: Hearings may be held in person, virtually, or a combination thereof. If the hearing is in person, testimony provided in the physical presence of the Hearing Panel is preferred, however, parties and witnesses to arbitration hearings may be permitted to participate virtually in hearings at the discretion of the Hearing Panel Chair. Associations may, at their sole discretion, hold hearings where all parties must participate virtually.

Postponement of hearing: Postponement may be granted if there are extenuating circumstances. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. Requests for postponement must be made in writing. Requests are reviewed by the Hearing Panel Chair. If the request is approved by the Chair, all parties shall be advised of the rescheduled hearing date.

Recording of the hearing: The Board shall have a court reporter present at the hearing or shall record the proceeding. Any party may, at the Board's discretion, record the proceeding or utilize a court reporter at their own expense. If a party utilizes a court reporter and orders a transcript, a copy of the transcription shall be made at the party's expense and presented to the Professional Standards Administrator. If the Board utilizes a court reporter in lieu of recording, the parties may not be prohibited from making their own recording. Videotaping is not permitted except with the advance express consent of the parties and the panelists. Any and all recording shall be conducted in accordance with state law. Copies of any recording or transcription are to be used only for the purpose of appeals or procedural reviews. Appeals and limited procedural reviews shall not be recorded by the Board or the parties. *(Revised 11/21)*

Method and objective of procedure: The Hearing Panel shall not be bound by the rules of evidence applicable in courts of law, but shall afford all parties a full opportunity to be heard, present witnesses, and offer evidence, subject to its judgment as to relevance.

Parties are strongly encouraged to provide any and all documents and evidence they intend to introduce during the hearing to the other party(ies) and to the association prior to the day of the hearing. Providing documents and evidence in advance can expedite the hearing process and prevent costly, unnecessary continuances. Evidence submitted to the association but not provided to the other party(ies) will be provided to the other party(ies) by the association at the time of the submission. Evidence submitted at the time of the hearing will be evaluated for admissibility by the hearing panel.

Due process procedure: (Chairperon's Procedural Guide of an Arbitration Hearing and Counter-Arbitration Request is available on-line at nar.realtor.)

The hearing will proceed as follows:

(1) Chairperson cites authority to hear case and explains reason for hearing.

(2) The arbitration request and counter-request will be read into the record.

(3) The testimony of all parties and witness(es) will be sworn or affirmed. All witness(es) will be excused from the hearing except while testifying. All parties appearing at the hearing may be called as witnesses without advance notice.

(4) Complainant/counter-respondent will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . .) and refuting the contention that any monies are owed.

(5) Respondent/counter-complainant will present a brief opening statement uninterrupted, stating the amount to be arbitrated and an explanation of the source of the dispute (i.e., commission dispute, request for security deposit refund, etc. . .) and refuting the contention that any monies are owed.

(6) Complainant/counter-respondent presents his case and defense by offering testimony and evidence from himself and/or his witness(es) to support the contention that monies are owed to the complainant by the respondent and refuting the contention that monies are owed to the counter-complainant.

    (a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(7) Respondent/counter-complainant presents her case, offering testimony and evidence from herself and/or witness(es) to support the contention that monies are owed to her by the counter-respondent and refuting the contention that she owes monies to the complainant.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(8) The complainant/counter-respondent may present additional testimony and evidence from himself and/or his witness(es) to further support his position as a complainant/counter-respondent.

(a) The respondent/counter-complainant may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(b) The Hearing Panel may question the complainant/counter-respondent and/or his witness(es) immediately after each has testified.

(9) The respondent/counter-complainant may present additional testimony and evidence from herself and/or her witness(es) to further support her position as respondent/counter-complainant.

(a) The complainant/counter-respondent may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(b) The Hearing Panel may question the respondent/counter-complainant and/or her witness(es) immediately after each has testified.

(10) Cross-examination in which the parties are given a final opportunity to examine each other. The complainant/counter-respondent may first ask any remaining questions of the respondent/counter-complainant and/or the respondent/ counter-complainant's witness(es). The respondent/counter-complainant may then ask any remaining questions of the complainant/counter-respondent and/or of the complainant/counter-respondent's witness(es).

(11) The Hearing Panel may question either the complainant/counter-respondent and/or the respondent/counter-complainant and/or their respective witness(es).

(12) When the parties and Hearing Panel have no further questions, the complainant/counter-respondent and respondent/ counter-complainant (respectively) may present uninterrupted closing statements.

(13) The Chair will then adjourn the hearing.

(14) The Hearing Panel will go into executive session to decide the case.

Settlement: The parties are encouraged to settle the dispute at any time. At the outset of the hearing, the Hearing Panel Chair should inform the parties that settlement is an option. At any time during the hearing, the parties can ask for a recess in an attempt to reach a settlement agreement. The parties, with the assistance of their respective counsel, if any, will determine the terms of their settlement agreement.

Award in arbitration hearing: The decision of the Hearing Panel in an arbitration proceeding shall be reduced to writing by the panel (setting forth only the amount of the award) and be signed by the arbitrators or a majority of them, and a copy shall be furnished to each of the parties to the arbitration. A copy also shall be filed with the Professional Standards Administrator of the Board.

Testimony: Any testimony relating to the character or general reputation of either party shall not be permitted unless the Hearing Panel finds that such testimony has a direct bearing on the case. The Chairperson may exclude any question which he or she deems irrelevant or argumentative.

Use of legal counsel: A party may be represented in any hearing by legal counsel. However, parties may not refuse to directly respond to requests for information or questions addressed to them by members of the panel except on grounds of self-incrimination, or on other grounds deemed by the panel to be appropriate. In this connection, the panel need not accept the statements of counsel as being the statements of counsel's client if the panel desires direct testimony. Parties shall be held responsible for the conduct of their counsel. Any effort by counsel to harass, intimidate, coerce, or confuse the panel members or any party to the proceedings, or any action by counsel which is viewed by the panel as disruptive of the proceedings, shall be grounds for exclusion of counsel. The decision to exclude counsel for any of the foregoing reasons shall be the result of a majority vote of the members of the panel and shall be nonappealable. In the event counsel is excluded, the hearing shall be postponed to a date certain not less than fifteen (15) nor more than thirty (30) days from the date of adjournment to enable the party to obtain alternate counsel, provided, however, that such postponement shall not be authorized if it appears to members of the panel that the action of counsel has been undertaken by counsel to obtain a postponement or delay of the hearing.

Be advised all matters discussed are strictly confidential.

(Revised 11/21)

Form #A-11

____

Board or State Association

____

Address | City | State | Zip

Certificate of Qualification and Affirmation of Confidentiality

This case is confidential.

I, the undersigned, member of a Hearing Panel of the Professional Standards Committee (or Board of Directors or tribunal thereof) of the

____

Board or State Association

do hereby acknowledge that any unauthorized disclosure or dissemination of the allegations, findings, or decision developed in connection with this case may violate Article 14 of the Code of Ethics and/or result in my removal from the Professional Standards Committee or Board of Directors, whichever is applicable.

Additionally, I hereby certify that I am not disqualified by any reason stated herein from hearing the case:

______________________________ vs. ______________________________.

Cited case is a hearing involving arbitration of a business dispute as defined in Article 17 of the Code of Ethics and/or in the professional standards procedures contained in the bylaws of the Board.

Reasons for disqualification: Any member of the Hearing Panel (or Board of Directors or tribunal thereof) shall be disqualified from hearing any case if the member:

(a) is related by blood or marriage to either complainant or respondent

(b) is an employer, partner, employee, or in any way is associated in business with either complainant or respondent

(c) is a party to the hearing, or a party or witness in any pending case involving any party to this hearing

(d) knows of any reason acceptable to the Hearing Panel (or Board of Directors or tribunal thereof) that may prevent the member from rendering an impartial judgment

______________________________ ______________________________

Type/Print | Signature

Dated: ______________________________, 20__________

NOTE: No more than one person licensed with any firm, partnership, or corporation may serve on the same tribunal. This limitation does not preclude two or more individuals from the same franchise from serving if the franchises are independently owned and operated.

(Revised 11/15)

Form #A-12

____
Board or Association

____
Address City State Zip

Award of Arbitrators

The undersigned, duly appointed as the Hearing Panel to hear and determine an arbitrable dispute between

_________________________ and _________________________
Complainant Respondent

certify that on _______________, 20_______, we heard the evidence of the parties and having heard all the evidence and arguments of the parties, a majority of the panel finds there is due and owing $________ to be paid by ______________________________ to

____________________________. The non-prevailing party must, within ten (10) days following transmittal of the award, either (1) pay the award to the party(ies) named in the award or (2) deposit the funds with the Professional Standards Administrator to be held in an escrow or trust account maintained for this purpose. Failure to satisfy the award or to deposit the funds in the escrow or trust account within this time period may be considered a violation of a membership duty and may subject the member to disciplinary action at the discretion of the Board of Directors.

The deposits of the parties shall be used to cover the costs of arbitration or shall go into the general operating funds of the Association of REALTORS®. In the event the award of the arbitrators is in an amount other than that requested by any of the parties, the disposition of the deposits shall be directed by the arbitrators.

Requests for procedural review of the arbitration hearing procedures must be filed in writing with the President within twenty (20) days after the award has been transmitted to the parties* and must be accompanied by a deposit of $_________________. **The request for procedural review must cite the alleged procedural deficiencies or other irregularities the party believes constitute a deprivation of due process. If no procedural review is filed within twenty (20) days following transmittal of the award and the non-prevailing party does not notify the Professional Standards Administrator that a legal challenge to the validity of the award has been initiated during that time, the award will be paid from the escrow or trust account. If a procedural review request is timely filed and the award is confirmed by the directors following the procedural review, the award will be paid from the escrow or trust unless the non-prevailing party advises the association in writing within fifteen (15) days from the transmittal of the directors' confirmation that a suit challenging the validity of the award has been filed. If the directors invalidate the award, the funds shall be returned to the individual who made the deposit.

Dated: _________________________________, 20________

Arbitrators:

Type/Print	Signature
______________________________	______________________________, Chairperson
______________________________	______________________________, Member
______________________________	______________________________, Member
______________________________	______________________________, Member
______________________________	______________________________, Member

Many arbitration hearings are convened to determine questions of procuring cause. For purposes of arbitration conducted by Boards and Associations of REALTORS®, procuring cause is considered to be the initiation of the unbroken chain of causal events that results in a successful transaction, defined as a sale that closes or a lease that is executed.

(Revised 05/15)

*Award becomes final twenty (20) days from the date the award is transmitted absent a procedural review request being filed.
**Appeal deposits can not exceed $500.

Form #A-13

____
Board or State Association

____
Address City State Zip

Request for Procedural Review (Arbitration)

To the President of the ____.
Board or State Association

In the case of: _______________________ vs. _______________________
Complainant Respondent

I (we), _________________, do hereby request a procedural review of the arbitration hearing procedures in the

above-cited case before the Board of Directors of the _______________________________.

NOTE: The Directors will not hear an appeal on the merits of the arbitration award. A request for procedural review must be based on allegation(s) of procedural deficiency or other irregularities which may have deprived a party of due process.

My (our) request is based on the following:

(Set forth in reasonable detail [narrative] the facts which support the request for review. Attach narrative to request form if the narrative exceeds the space below. The procedural review request must be accompanied by a deposit in the amount

of $___________* made payable to the _____________________ Board or Association).

____

____

____

NOTE: Only those facts and issues raised in this written request will be considered by the Board of Directors at the procedural review hearing.

Dated: _______________________

Name (Type/Print): _______________________ Name (Type/Print): _______________________

Signature: _______________________ Signature: _______________________

Address: _______________________ Address: _______________________

_______________________ _______________________

Phone: _______________________ Phone: _______________________

(Revised 5/05)

*Not to exceed $500.

Form #A-14

____
Board or State Association

____
Address City State Zip

Official Notice of Procedural Review (Arbitration)

In the case of: ______________________________ vs. ______________________________
Complainant Respondent

Above parties are hereby notified:

(1) ______________________________ has requested a procedural review of the arbitration hearing procedures used in the above-cited case before the Board of Directors of the ______________________________.
Board or State Association

A copy of the Request for Review, together with its supporting documentation, is attached.

(2) The Board of Directors will meet on ______________________________, 20________, __________ A.M./P.M.
Day Month Year Time

at ______________________________
Place of Hearing

to hear the request that the award of the arbitrators be overturned.

(3) The members of the Board of Directors who will hear the request are:

______________________________ ______________________________

______________________________ ______________________________

______________________________ ______________________________

(If more space is needed, attach list of other Directors who will hear the request.)

(4) Either party may be represented by legal counsel, and each party is required to give the Board and the other party written notice of an intention to have counsel present _______ days before the hearing. Failure to provide this notice will not invalidate a party's right to legal representation, but may result in a continuance of the hearing if the procedural review tribunal determines that the rights of any other party require representation by legal counsel.

(5) Either party may file with the Professional Standards Administrator not less than ______ days prior to the date of the procedural review hearing written request for disqualification from the hearing of any member of the Board of Directors for the following reasons:
   (a) is related by blood or marriage to either complainant or respondent
   (b) is an employer, partner, or employee or is in any way associated in business with either complainant or respondent
   (c) is a party to the hearing
   (d) knows of any reason that may prevent the member from rendering an impartial judgment
   (e) has served as a member of the Grievance Committee initially reviewing the request for arbitration or as a member of the arbitration Hearing Panel which rendered the award

(6) The parties shall not discuss the case with any member of the arbitration Hearing Panel or Board of Directors prior to or after the procedural review hearing and prior to announcement of the decision of the Directors.

Respectfully submitted,

______________________________ ______________________________, Professional Standards Administrator
Type/Print Signature

Dated: ______________________________, 20________

Form #A-14a

____

Board or State Association

____

Address City State Zip

Decision of the Procedural Review Hearing Tribunal

Procedural review of the arbitration hearing in the matter of:

_______________________ vs. _______________________

Complainant Respondent

A copy of the Award of Arbitrators is attached. The Procedural Review Tribunal met on _______________, 20____.

The Procedural Review Tribunal's decision is as follows:

❒ Affirm the award of the arbitration Hearing Panel.

❒ Overturn the award of the arbitration Hearing Panel based on a substantial procedural error in the arbitration hearing process that resulted in a denial of due process or in a determination that the appellant was otherwise deprived of due process, and

- ❒ the matter is to be referred to the Board's Professional Standards Committee for a new hearing on the merits before a different Hearing Panel.
- ❒ the matter is to be referred to the State Association for a new hearing on the merits before a different Hearing Panel pursuant to Professional Standards Policy Statement #18, Local Member Board Requests for the Conduct of Ethics and Arbitration Hearing by the State Association.
- ❒ the parties are released from their obligation to arbitrate and are free to pursue any other remedy that may be available to them.

Procedural Review Tribunal:

_______________________	_______________________, Chairperson
_______________________	_______________________, Member
_______________________	_______________________, Member
_______________________	_______________________, Member
_______________________	_______________________, Member
Type/Print	Signature

Dated: _______________________, 20____

(Amended 11/17)

Form #A-15

Checklist of Professional Standards Concerns for Elected Officers and Directors and for Professional Standards Administrators of Boards of REALTORS®

❐ (1) **Concern** for the obligation of the Board to enforce the Code of Ethics (see Article IV, Bylaws, NATIONAL ASSOCIATION OF REALTORS®).

❐ (2) **Concern** for the enhanced public image and credibility of REALTORS®, REALTOR ASSOCIATE®s, and the Board.

❐ (3) **Concern** for liability of the Board related to Code enforcement — minimal if correct; serious if done inaccurately or inappropriately.

❐ (4) **Concern** for sound procedures, due process, and fairness — every member entitled.

❐ (5) **Concern** that the Board's professional standards procedures are substantively in compliance with National Association and State Association procedures — ensures coverage of Errors and Omissions Insurance.

(The National Association recommends adoption of the *Code of Ethics and Arbitration Manual*, as adapted to comply with state law.)

❐ (6) **Concern** for wise appointments to the Grievance Committee and Professional Standards Committee — mature, experienced, and knowledgeable individuals of judicious temperament.

(a) **President-Elect** — start to consider potential appointees early.

(b) Select best possible **Chairperson.**

(c) Select competent **Committee Members.**

❐ (7) **Concern** for Leadership's Involvement — President's personal commitment to Code awareness training programs and proper Code enforcement.

❐ (8) **Concern** for accountability of Grievance Committee and Professional Standards Committee Members.

❐ (9) **Concern** for distinguishing between "ethics" and "arbitration" cases.

❐ (10) **Concern** that ethics hearings serve their purposes — education of members and vindication of the Code.

❐ (11) **Concern** that arbitration be limited to "properly arbitrable matters."

❐ (12) **Concern** that the Grievance Committee does not exceed its function of making preliminary reviews to determine proper disposition of ethics complaints and requests for arbitration.

❐ (13) **Concern** that Board Officers and staff not be given or assume responsibility beyond their proper role in professional standards matters.

❐ (14) **Concern** that ethics and arbitration matters be heard separately — arbitration first, then ethics.

❐ (15) **Concern** that the Board has access to legal counsel and that counsel's involvement in professional standards proceedings or in reviewing professional standards decisions is routine.

❐ (16) **Concern** that the public is provided adequate information and assistance to fully understand what the Board can do and does do, and what the Board cannot do.

❒ (17) **Concern** that Board hearings are conducted in strict accordance with the professional standards procedures of the Board's bylaws.

❒ (18) **Concern** that professional standards procedures and proceedings are unbiased and conducted without fear or favor— **ensure impartiality.**

❒ (19) **Concern** that the parties are aware that an appeal remedy is always available in ethics matters.

❒ (20) **Concern** that the Board of Directors understands its role in professional standards matters.

(a) Ethics — appeal.

(b) Arbitration — no review or appeal, except in respect to alleged procedural irregularities resulting in deprivation of "due process."

❒ (21) **Concern** for confidentiality of professional standards proceedings.

❒ (22) **Concern** for proper publication of decisions as specified in the *Code of Ethics and Arbitration Manual* — limited dissemination of findings.

❒ (23) **Concern** for matters that are currently being litigated.

(a) On the advice of Board legal counsel, an ethics hearing may proceed **or** may be held in abeyance if criminal or civil litigation or proceeding before state real estate licensing authority or other state or federal regulatory or administrative agency is pending on the same matter.

(b) **Neve**r hold an arbitration hearing when the arbitrable matter is the subject of litigation.

❒ (24) **Concern** for common sense — encourage resolution of disputes by mediation (reduces arbitration case load).

❒ (25) **Concern** for training — the National Association recommends that an Education Subcommittee of the Board's Professional Standards Committee be appointed and charged with providing a continuing education program for Board Members in Code of Ethics awareness, understanding, and procedures.

❒ (26) **Concern** for Code enforcement training — State and Board.

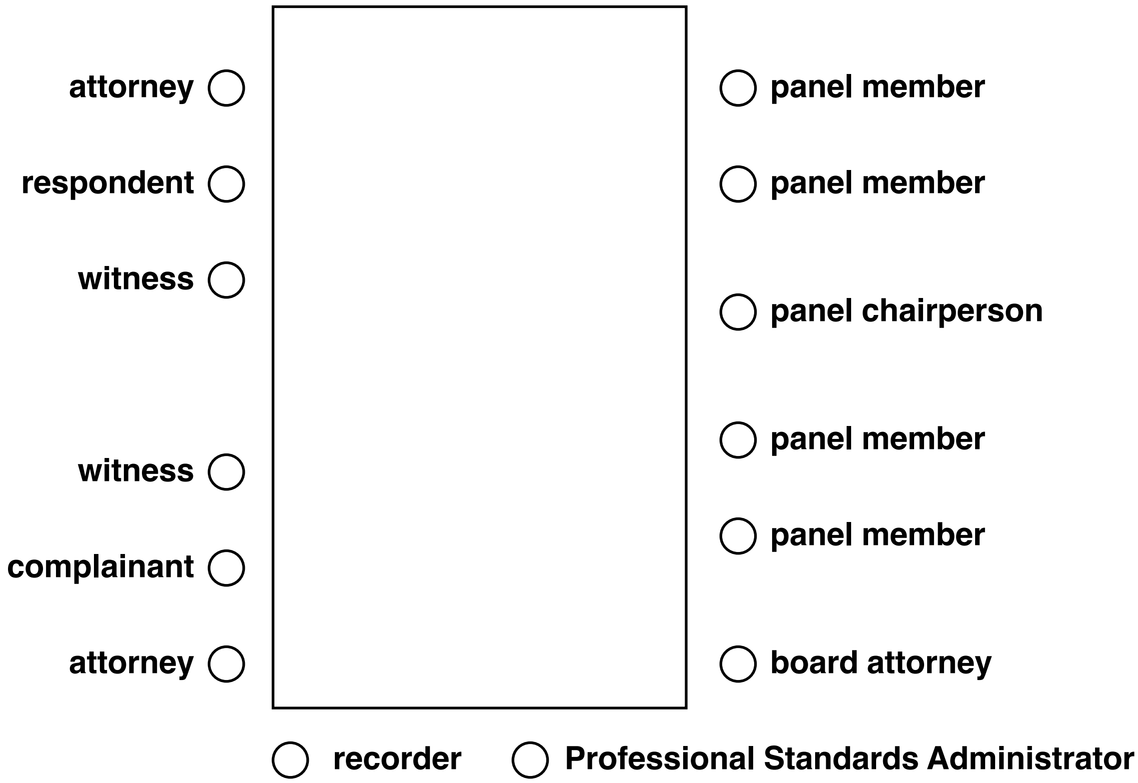
❒ (27) **Concern** for dealing promptly and fairly with complaints brought by the public.

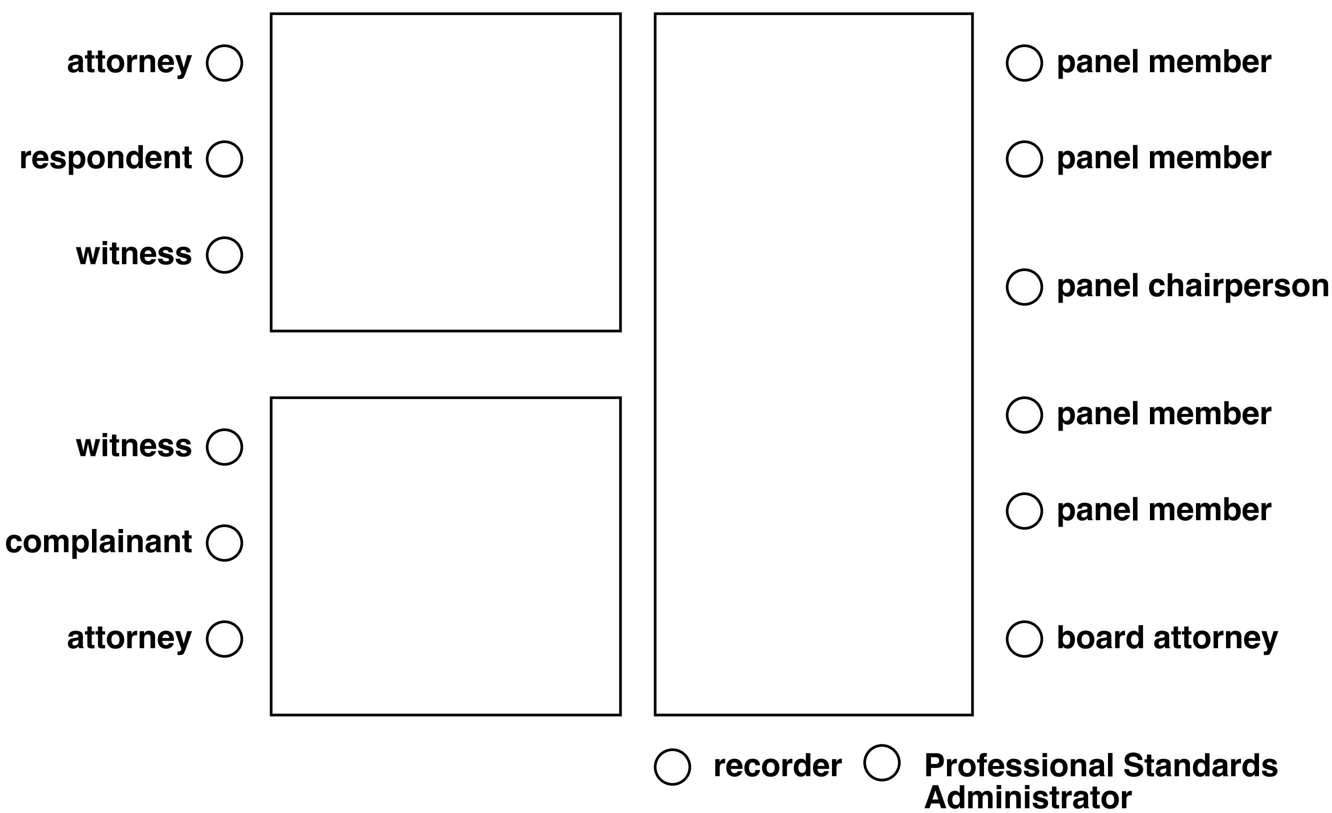
❒ (28) **Concern** for liability of REALTORS® in dealing with the public.

❒ (29) **Concern** for changes in professional standards policies and procedures, in revisions of the Code, new or revised interpretations of the Code, and revised editions of training aids and National Association publications related to the Code and its enforcement.

Form #A-16

Seating Arrangements for Hearings





Form #A-17

____
Board or State Association

____
Address City State Zip

Mediation Resolution Agreement

The undersigned, as Members of the ______________________________ (Board or State Association) and pursuant to the mediation guidelines incorporated into the ______________________________ (Board or State Association)'s professional standards procedures, have voluntarily participated in and agree to the following resolution:

____

____

____

____

The undersigned agree to be bound by the above resolution and waive any and all future rights to submit the dispute to arbitration before the Professional Standards Committee of the ________________ (Board or State Association) or to litigate the matter. We further hold the ________________ (Board or State Association) harmless, acknowledge that we were advised of our right to attorney representation at the mediation and attorney review of the Resolution Agreement, and expressly waive any and all liability of the ________________ (Board or State Association), or any claim that we have against the ________________ (Board or State Association) arising out of the manner in which the ________________ (Board or State Association) conducted the mediation or the resolution of the dispute reached as a result of the ________________ (Board or State Association)'s mediation procedures. Further, if the agreement is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney's fees.

____
Type/Print Signature Date

____
Type/Print Signature Date

As Mediation Officer of the ________________ (Board or State Association), I do attest that I was present during the mediation process and that the above resolution agreement was voluntarily entered into by the parties to the dispute.

____
Type/Print Signature Date

Form #A-17a

____
Board or State Association

____
Address City State Zip

Notice of Settlement, Withdrawal of Arbitration Request

Notice is given herewith to the ____ (Board or State Association) that in the matter of ___________________________ vs. ____________________________ the parties have reached a settlement, the parties have satisfied the terms of the settlement agreement, and the arbitration request in the matter of _____________________________ vs. _______________________________ is hereby withdrawn by the complainant(s).

_______________________________________ _______________________________________
Complainant Name (Type/Print) Signature Date

_______________________________________ _______________________________________
Complainant Name (Type/Print) Signature Date

NOTE: This form, or one substantively similar, may be required by associations when complainants wish to withdraw their arbitration requests after settlement.

(Adopted 5/16)

Form #A-17b

____
Board or State Association

____
Address City State Zip

Arbitration Settlement Agreement*

The undersigned, as Members of the ______________________ (Board or State Association) and pursuant to the arbitration guidelines incorporated into the ______________________ (Board or State Association)'s professional standards procedures, have voluntarily participated in and agree to the following settlement of their pending arbitration:

____
____
____
____
____
____
____

The undersigned agree to be bound by the above resolution and waive any and all future rights to submit the dispute to arbitration before the Professional Standards Committee of the ______________ (Board or State Association) or to litigate the matter. We further hold the ______________ (Board or State Association) harmless, acknowledge that we were advised of our right to attorney representation at the arbitration and attorney review of the Settlement Agreement, and expressly waive any and all liability of the ______________ (Board or State Association), or any claim that we have against the ______________ (Board or State Association) arising out of the manner in which the ______________ (Board or State Association) conducted the arbitration or the resolution of the dispute reached as a result of the ______________ (Board or State Association)'s arbitration procedures. Further, if the agreement is judicially enforced, the non-complying party agrees to reimburse the other party for court costs and reasonable attorney's fees.

____
Type/Print Signature Date

____
Type/Print Signature Date

*Use of this form is at the discretion of the parties. It is strongly recommended that the parties commit to writing all elements of their settlement agreement, including any timeframes for completion of the parties' obligations. To avoid the unauthorized practice of law, this settlement should only be drafted by the parties or their legal counsel.

(Adopted 5/17)

Form #A-18

Arbitration Activity Report

Boards are encouraged to publish periodic Code of Ethics activity reports. This model is a suggestion, and Boards may choose to provide other relevant information.*

Number of arbitration requests filed from ______________________ to ______________________.
Date Date

	Dollar amount requested	Mediation attempted		Resolved through mediation		Dollar amount awarded	Procedural review request filed		Final action by Board of Directors
		Yes	No	Yes	No		Yes	No	
Arbitration request #1									
Arbitration request #2									
Arbitration request #3									
Arbitration request #4									
Arbitration request #5									
Arbitration request #6									
Arbitration request #7									
Arbitration request #8									
Arbitration request #9									
Arbitration request #10									

*No report shall include the names of individuals or firms.

Form #A-19

Sample Format of Agreement Between __________ and __________ Boards of REALTORS® to Establish Multi-Board (or Regional) Professional Standards Enforcement Procedures

(1) **Authority**

The authority for the establishment and utilization of multi-Board (or regional) professional standards enforcement procedures shall be established by this Agreement approved by the Boards of Directors of ________________________________ and ______ ________________________________ Boards of REALTORS® and confirmed by approval of the general membership at a duly called meeting with notice as required by the Boards' bylaws.

(2) **Geographic Area**

The geographic area served by this Agreement shall be the area of the combined territorial jurisdiction assigned by the NATIONAL ASSOCIATION OF REALTORS® to the Boards which are signatories to this Agreement.

(3) **Purpose**

The purpose of this Agreement is to create multi-Board (or regional) professional standards enforcement procedures providing for the appointment of Mediation Officers and the establishment of a joint Grievance Committee, Professional Standards Committee, and an Appeal Panel comprising members from each signatory Board for enforcement of the Code of Ethics, including the mediation of disputes and the conduct of arbitration hearings, involving members of the signatory Boards to ensure impartial and unbiased Hearing Panels for the conduct of hearings on a basis designed to provide this service and meet the responsibilities of the signatory Boards on an efficient and effective basis to better serve their members.

(4) **Composition of Tribunals**

(a) This Agreement authorizes the establishment of a multi-Board (or regional) Grievance Committee. The Grievance Committee shall be composed of at least one (1) member in good standing of each signatory Board.

Members of the Grievance Committee from each signatory Board shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be unable to serve for any reason. The Grievance Committee shall select its own Chairperson (or, alternatively, the Grievance Committee Chairperson shall be selected from members of the Grievance Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There must be at least three (3) individuals serving on the multi-Board Grievance Committee, and it is desirable that the number be greater to provide an adequate number of members to handle the anticipated case load without undue stress.

(b) This Agreement also authorizes the establishment of a multi-Board (or regional) Professional Standards Committee. The Professional Standards Committee shall be composed of at least two (2) members in good standing from each signatory Board.

The members of the Professional Standards Committee shall be appointed by the Presidents of the respective Boards, subject to confirmation by the respective Boards of Directors, provided that the Presidents shall have the power to appoint, on a timely basis, and without necessity of confirmation by the Boards of Directors, a substitute member to the Committee for any member from their respective Boards who may be disqualified for any valid reason from hearing a particular matter. The Professional Standards Committee shall select its own Chairperson (or, alternatively, the Chairperson shall be selected from members of the Professional Standards Committee by a majority vote of the Presidents of the Boards which are signatories to this Agreement).

NOTE: There shall be at least nine (9) members of the Professional Standards Committee, and more, if feasible, to handle the anticipated case load without undue stress.

(c) Members of the Grievance Committee and the Professional Standards Committee shall be appointed initially in terms of one (1), two (2), and three (3) years (one-third for each term). New appointments shall be made for three (3) year terms as each term expires. Members of the committees shall be eligible for reappointment.

(d) This Agreement also authorizes the appointment of a panel of Mediation Officers to include at least one (1) such Mediation Officer from each signatory Board. Although utilization of the service of mediation shall be voluntary, unless REALTORS® (principals) are required by their Board which is a signatory to this agreement to mediate otherwise arbitrable disputes pursuant to Article 17,* and although the process is not defined as a tribunal, all parties to any requested arbitration shall be provided the opportunity to mediate a dispute arising out of a real estate transaction and their relationship as REALTORS® prior to the arbitration of the dispute. *(Revised 11/11)*

(5) **Operation**

(a) Professional standards hearings and the organization and procedures incident thereto shall be governed by the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS® as amended from time to time, and as adapted to conform to the provisions of applicable state law, and which is hereby agreed shall be considered as adopted and incorporated into the bylaws of each Board signatory to this Agreement.

✍ NOTE: Any matters of local Board option should be considered and agreed on in advance as necessary and the signatory Boards should also clarify which Board will be responsible for administering the process. The following is an example of such clarification:

✍ *The respondent's local Board, or the Board through which the respondent gains access to and use of the MLS, will be responsible for administering the procedures and all optional provisions (see pages i and ii of the* Code of Ethics and Arbitration Manual*) of that Board will control.*

(b) Appeals of the Grievance Committee's dismissal of an ethics complaint or arbitration request (or challenges to the classification of arbitration requests) shall be heard by those members of the Committee who did not serve on the original tribunal. If panels of the Grievance Committee are not used, any appeal of the Grievance Committee's dismissal (or challenge to an arbitration request classification) shall be heard by a tribunal of five (5) members selected from the Boards of Directors of the signatory Boards to be appointed by the Boards' Presidents. *(Adopted 11/96)*

Appeal to an ethics determination rendered by the multi-Board (or regional) Professional Standards Committee shall be heard by those members of the Committee who did not constitute the original Hearing Panel. (For this reason, there should be an adequate number of members appointed to the Committee to provide an Appeal Panel of at least five [5] members.)

(c) Appeal is not provided from the decision of an arbitration panel established under this Agreement, except with respect to a claim by a party alleging deprivation of due process. Such a claim shall be heard by an Appeal Panel as described in the second paragraph of (b) above.

(d) In matters of alleged unethical conduct, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee that has not been appealed, or as finally determined if appealed, will be provided to the respondent's Board of original jurisdiction for ratification or implementation, as appropriate.

(e) In matters involving arbitration, any determination rendered by a Hearing Panel of the multi-Board (or regional) Professional Standards Committee will be provided to each respective party's Board of original jurisdiction for informational purposes. In the event a party to an arbitration refuses to pay an award in arbitration, the Board in which the award recipient holds membership shall advise the award recipient to seek judicial enforcement as set forth in Section 56, **Part Ten**, and in Appendix III, **Part Ten,** of the *Code of Ethics and Arbitration Manual*.

✍ (f) In the event a complainant alleges that the respondent has improperly refused to submit a dispute to arbitration (or to mediation if the respondent's signatory Board requires REALTORS® [principals] who are parties to a dispute to mediate otherwise arbitrable matters pursuant to Article 17), the allegation shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board's Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original Arbitration Hearing Panel, or a tribunal of five [5] members selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). The procedure for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact to decide will be whether the party has refused to submit an arbitrable matter to arbitration (or mediation if required) in violation of Article 17. Upon determination that the member has refused to arbitrate or mediate a properly arbitrable matter, the (specify body — name of tribunal) may direct implementation of appropriate sanction, including but not limited to suspension or expulsion of the member from the local Board of REALTORS® and/or its MLS. The decision of the (specify body — name of tribunal) shall be final and binding and is not subject to further review by the State Association or any signatory Board. *(Revised 11/15)*

✍ (g) In the event a party fails to, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator of the Board administering the arbitration consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual,* that failure shall be brought before (choose one: a tribunal of five [5] members selected from the multi-Board Professional Standards Committee to be appointed by the Committee's Chairperson and chosen from the individuals who were not selected to serve on the original arbitration Hearing Panel, or a tribunal of five [5] members selected from the Board of Directors of the signatory Boards to be appointed by the Board Presidents). This tribunal, consistent with Section 53, may, at its discretion, impose discipline, including but not limited

*Requiring REALTORS® (principals) to mediate otherwise arbitrable disputes requires establishment of an affirmative obligation in the Board's governing documents. Enabling bylaw provisions can be found at www.nar.realtor (see NAR *Model Bylaws*).

to termination of Board membership and/or MLS access/use, or may give the party an additional period to make the required deposit. The tribunal may also stipulate appropriate discipline to be automatically imposed if the party fails to make the deposit within the time established by the tribunal. The decision of the tribunal shall be final and binding and is not subject to further review by the State Association or any signatory Board. *(Adopted 05/15)*

(6) **Reservation of Rights**

(a) It is understood and agreed by the Boards signatory to this Agreement that each Board reserves to itself all authority, rights, and privileges as have been assigned to it by its Charter and agreement with the NATIONAL ASSOCIATION OF REALTORS®, except as voluntarily modified by this Agreement.

(b) It is further understood and agreed that any Board signatory to this Agreement may withdraw from the Agreement at any time provided the withdrawing Board shall provide notice to the other signatory Boards ninety (90) days in advance of the date of withdrawal.

IN WITNESS THEREOF, the parties have hereto set their hands and seals on this _____ day of ________________, 20_________.

The effective date of this Agreement shall be ____, 20________.

Attested by:

Type/Print President's Name	President's Signature
Board of REALTORS®	Date
Type/Print Association Executive's Name	Association Executive's Signature
Board of REALTORS®	Date
Type/Print President's Name	President's Signature
Board of REALTORS®	Date
Type/Print Association Executive's Name	Association Executive's Signature
Board of REALTORS®	Date
Type/Print President's Name	President's Signature
Board of REALTORS®	Date
Type/Print Association Executive's Name	Association Executive's Signature
Board of REALTORS®	Date

(Revised 05/15)

Form #A-20

____
Board or State Association

____
Address City State Zip

Appeal of Grievance Committee (or Hearing Panel)* Dismissal or Appeal of Classification of Arbitration Request

In the case of ______________________________ vs. ______________________________
Complainant Respondent

Check the appropriate box. Note that the arbitration request and any attachments to the request cannot be revised, modified, or supplemented. Directors consider only the information and documents considered by the Grievance Committee (or Hearing Panel) with this form and explanation below.

❐ I/we appeal the dismissal of the above-referenced arbitration request.

❐ I/we appeal the classification (mandatory or voluntary) of the above-referenced arbitration request.

Explanation of why complainant or respondent disagrees with the Grievance Committee's (or Hearing Panel's) dismissal of the arbitration request or classification of the request:

____

____

____

____

Appellant(s):

Signature of Appellant	Signature of Appellant
Name (Type/Print)	Name (Type/Print)
Street Address	Street Address
City State Zip Code	City State Zip Code
(_____) Phone	(_____) Phone
Dated	Dated

*Hearing Panels that dismiss an arbitration request should transmit their decision via correspondence (not Form #A-12, Award of Arbitrators). Appellants appealing a Hearing Panel's dismissal should use this form.

(Revised 11/17)

Form #A-21

____
Board or State Association

____
Address City State Zip

Action of the Appeal Hearing Tribunal
(Arbitration Request)

The decision of the Grievance Committee (or Hearing Panel) to dismiss the arbitration request in the matter of:

______________________________ vs. ______________________________
Complainant Respondent

dated ____________________, was appealed by ____________________ and was considered on ____________________
Date Appellant Date

by the Appeal Tribunal of the Board of Directors of ____________________.
Board/Association

The Appeal Tribunal's decision in the above-referenced case is to:

❐ Deny the appeal and uphold the Grievance Committee's (Hearing Panel's) decision.

❐ Grant the appeal and overturn the Grievance Committee's (Hearing Panel's) decision. This matter is hereby referred to a hearing before the Professional Standards Committee. You will be notified in the near future concerning a hearing date.

The decision above was rendered by an Appeal Tribunal of the Board of Directors of the ____________________ comprised of the following members whose signatures are affixed below.
Board/Association

The appeal was considered and decision deemed final on ____________________.
Date

______________________________, Chairperson
Type/Print Name

____
Signature

______________________________, Member
Type/Print Name

____
Signature

______________________________, Member
Type/Print Name

____
Signature

______________________________, Member
Type/Print Name

____
Signature

______________________________, Member
Type/Print Name

____
Signature

(Adopted 11/01)

Part Fourteen — State Association Professional Standards Committee

Authority and Requirement: The obligation of the State Association concerning the Code of Ethics of the National Association is established in Article IV, Code of Ethics and Member Board Business Practices, Sections 1 and 2, *Bylaws*, National Association:

> ***Section 1.*** *Each Member Board shall adopt the Code of Ethics of the National Association as a part of its governing regulations, for violation of which disciplinary action may be taken.**
>
> *Adoption of the Code of Ethics includes responsibility for providing applicant/new member Code of Ethics orientation and ongoing member ethics training that satisfies the learning objectives and minimum criteria established by the National Association from time to time.*
>
> ***Section 2.*** *Any Member Board which shall neglect or refuse to maintain and enforce the Code of Ethics with respect to the business activities of its members may, after due notice and opportunity for hearing, be expelled by the Board of Directors from membership in the National Association. Enforcement of the Code of Ethics also requires Member Boards to share with the state real estate licensing authority final ethics decisions holding REALTORS® in violation of the Code of Ethics in instances involving real estate related activities and transactions where there is reason to believe the public trust may have been violated. The "public trust", as used in this context, refers to demonstrated misappropriation of client or customer funds or property, discrimination against the protected classes under the Code of Ethics, or fraud. Enforcement of the Code of Ethics also requires Member Boards to provide mediation and arbitration services to members and their clients so that the dispute resolution requirements of Article 17 of the Code of Ethics can be met.* (Revised 1/21)
>
> *Enforcement of the Code of Ethics also includes responsibility for ensuring that persons primarily responsible for administration of enforcement procedures have successfully completed training that meets the learning objectives and minimum criteria established by the National Association from time to time.*
>
> *Enforcement of the Code of Ethics also prohibits Member Boards from knowingly granting REALTOR® or REALTOR ASSOCIATE® membership to any applicant who has an unfulfilled sanction pending which was imposed by another Board or Association of REALTORS® for violation of the Code of Ethics.*

*The separation of arbitration proceedings from proceedings under the Code of Ethics should not be construed as precluding consideration by the Hearing Panel of all factors, including the propriety of the conduct of the parties, relevant to the dispute which is the subject of the arbitration.

Jurisdiction of State Association: (if stated in State Association bylaws; also refer to provisions relating to professional standards in the *State Association Model Bylaws* recommended by the National Association):

(1) A local Board, prior to referring an ethics complaint or arbitration request for review to the State Association, should exhaust all efforts to impanel an impartial panel to conduct either the original hearing or the appeal or procedural review. These efforts may include the appointment of knowledgeable members of the Board on an ad hoc basis to serve on either a Hearing Panel or on behalf of the Board of Directors. If, because of notoriety, etc., the Board cannot impanel an impartial tribunal, the Board may refer the matter to the State Association, and the State Association may delegate to another Board or a regional enforcement facility, the authority to hear the case on behalf of the State Association. No Board or regional enforcement facility, however, may be required to accept this delegation of authority. If no other entity is amenable to conducting the review, the State Association shall be responsible for conducting the hearing. State Associations may, at their discretion, require that the President or Association Executive of the Board referring an ethics complaint or arbitration request certify that all reasonable efforts to impanel an impartial panel had been made, and may further require that those efforts be documented. *(Amended 11/03)*

(2) Allegations of unethical conduct and contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS® and between REALTORS® and their customers or clients may be submitted to an ethics or arbitration panel at the State Association level under the following circumstances: *(Amended 11/96)*

   (a) Allegations of unethical conduct made against a REALTOR® or REALTOR ASSOCIATE® who is directly a member of the State Association and not a member of any local Board. *(Amended 11/95)*

   (b) Allegations of unethical conduct made against a REALTOR® or REALTOR ASSOCIATE® in the instance in which the local Board, because of size or other valid reason, determines that it cannot provide a due process hearing of the matter and petitions the State Association to conduct a hearing. *(Amended 11/95)*

   (c) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS® who are not members of the same Board where the matter has been referred to the State Association by both local Boards. *(Amended 11/96)*

(d) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTORS® who are directly members of the State Association and are not members of any Board.* *(Amended 11/96)*

(e) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between a REALTOR® who does not hold membership in any Board, but is directly a member of the State Association, and a REALTOR® who is a member of a Board.** *(Amended 11/96)*

(f) Contractual disputes (and specific non-contractual disputes as defined in Standard of Practice 17-4) between REALTOR® Members of the same Board where the Board with good and sufficient reason is unable to arbitrate the dispute. (This provision is not designed to relieve the local Board of its primary responsibility to resolve differences arising between members of the same Board. The section recognizes that in some Boards with limited membership usual arbitration procedures may be impossible.) *(Amended 11/96)*

(g) Contractual disputes between a customer or a client and a REALTOR® where the Board with good and sufficient reason is unable to arbitrate the dispute or the REALTOR® is a direct member of the State Association. *(Adopted 11/95)*

Ethics and Arbitration Proceedings: Professional standards hearings and the organization and procedures incidental thereto shall be governed by the *Code of Ethics and Arbitration Manual* of the ___________________ (state) Association of REALTORS®, as from time to time amended, which by this reference is made a part of these bylaws.

It is recommended to State Associations that they adapt and adopt the *Code of Ethics and Arbitration Manual* of the NATIONAL ASSOCIATION OF REALTORS® to conform to the provisions of applicable state law. It is further recommended that the State Association expand the provisions of the *Code of Ethics and Arbitration Manual* as adopted to include detailed procedures for handling interboard arbitration of business disputes, as defined by Article 17 of the Code of Ethics, between REALTORS® of different Boards within the state. This fulfills the obligation of the State Association described in the preceding paragraphs and as established by Articles 14 and 17 of the Code of Ethics. If state law does not recognize or restricts arbitration within the state, the State Association is requested to so advise the National Association as a matter of information and record, and to comply with applicable state law. It is intended in all instances that State Associations and local Boards comply with applicable state law and that they do not act in contravention of law.

In adapting the *Code of Ethics and Arbitration Manual* of the National Association to include procedures for handling interboard arbitration, the following should receive special attention:

(1) **Geographic distribution of professional standards panel members:** Inasmuch as disputes may arise between Board Members from different Boards located distant from each other, it is desirable to establish members from the Professional Standards Committee in all areas of the state. When disputes arise requiring interboard arbitration, Hearing Panel members may be selected from the area where the hearing will take place to avoid unnecessary travel time. Further, it is desirable to include representative members from all districts or regions, or perhaps from each Board of the state.

(2) **Further extension of available Professional Standards Committee members:** It may be desired that the state will provide in its *Code of Ethics and Arbitration Manual* that members of the State Association Professional Standards Committee be empowered, upon direction from the President of the State Association, to appoint additional members of the committee from a given district or region of the state to have all the powers of regular members of the Professional Standards Committee and to conduct a hearing as required in that particular district or region of the state. (Alternate method of appointment may be preferred by a State Association to accomplish the statewide facility on a workable basis.)

(3) **Duties of the committee:** Duties of the Professional Standards Committee are set forth in the "Suggested Model Bylaws, State Association of REALTORS®," as recommended by the National Association, and in this *Code of Ethics and Arbitration Manual*. However, the State Association should exercise care to adapt the provisions contained in this Manual to be applicable to the special and particular responsibilities of the State Association.

(4) **Complaints of alleged unethical conduct or requests for arbitration:** The *Code of Ethics and Arbitration Manual* of the State Association should clearly delineate the specific circumstances under which complaints of alleged unethical conduct or requests for arbitration may be properly directed to the State Association, and to describe the method by which such complaints or requests may be filed.

(5) **Method of determining propriety of a complaint of alleged unethical conduct or request for arbitration:** It is suggested that the State Association have a standing Grievance Committee, which shall be the committee to examine a complaint of alleged unethical conduct or request for arbitration to determine if it is properly presented by

*The State Association is a "Member Board" of the National Association by definition set forth in Article III, Section 1(B) and Section 4, Constitution, NATIONAL ASSOCIATION OF REALTORS®.

**Reference is made to members of the State Association who are outside the jurisdiction of and are not members of any local Board within the state.

a Member Board or Board Member and has validity and substance to warrant a hearing before the State Association's professional standards facilities. This Grievance Committee should have sufficient members throughout the state to enable the Committee Chairperson to appoint one or more members to evaluate the complaint or request and to make such preliminary review as required to assist in the evaluation. If deemed appropriate to arrange a hearing before a Hearing Panel of the Professional Standards Committee, the matter will be referred by the Chairperson of the Grievance Committee to the Executive Vice President of the State Association with request to arrange the necessary hearing by having the appropriate officer of the State Association make necessary appointment of panel members, etc., to accomplish the hearing. The Grievance Committee's work is not that of a Hearing Panel of the Professional Standards Committee, but has the special function of determining the propriety of the complaint or request and the propriety of conducting a hearing. It is similar in function to the "grand jury" in the American judicial system. This committee is authorized in the *Code of Ethics and Arbitration Manual,* if adopted and adapted by the State Association.

(6) **Expenses of hearings conducted by State Association:** The conduct of hearings by the State Association can be less convenient than a local Board hearing. It involves distance, time, and costs which are significantly greater. Therefore, the provisions of the *Code of Ethics and Arbitration Manual,* as adapted, should specify to the extent possible the appropriate allocation of costs of any hearing conducted by the State Association. Notification of the allocation of such costs should be made in advance of the hearing, or at least the method by which such determination shall be made should be understood and agreed in advance of the hearing. This will avoid misunderstanding and further dispute between the parties, local Boards, and the State Association. For example, the State Association's *Code of Ethics and Arbitration Manual* should state whether the deposits (not to exceed $500) made by each party in requesting arbitration shall be retained by the State Association and go toward the cost of arbitration, or whether only the deposit of the nonprevailing party shall be retained, etc. Further, it should be clearly stated if the award shall include any of the costs incurred by the prevailing party. It should be clearly set forth if the State Association will bear all or part of the costs involved, or whether the costs are to be borne entirely by the parties. If partial costs are involved, the procedure should delineate which costs are to be borne by the parties and which, if any, by the State Association. However, under no circumstances should a party to an ethics proceeding be responsible for another party's costs or the State Association's costs. A party that appeals an ethics determination may be charged an appeal deposit (not to exceed $500). If the Hearing Panel's decision is overturned, the deposit shall be returned to the appellant; if the decision is adopted, the money shall pass into the general treasury of the Association; if the decision is modified, the appeal tribunal shall determine the disposition of the deposit. *(Amended 11/95)*

(7) **Composition of Hearing Panels and appellate or review panels:** State Associations have certain latitude in establishing the procedures for appointing Hearing Panels for ethics and arbitration hearings and for determining the appropriate composition of appeal panels (ethics) and procedural review panels (arbitration). The State Association's Board of Directors need not be involved in the appeal or review process. For example, a State Association could adopt procedures whereby Hearing Panels would be selected from the Professional Standards Committee, and any subsequent appeal or request for review would be considered by those members of the Professional Standards Committee who did not take part in the initial hearing. Alternatively, the State Association's Executive Committee or a group of Directors selected by the State Association President could serve as the appeal or procedural review panel. Any procedure established should be made an integral part of the State Association's written professional standards procedures.

The procedures to be followed when no appeal is filed or after any appeal has been determined should also be made an integral part of the State Association's written procedures. Final decisions may be ratified by the Board of Directors of the State Association; by a group of Directors selected by the state President; or by the State Association's Executive Committee. *(Adopted 11/96)*

(8) **Refusals to arbitrate:** In the event a member is alleged to have improperly refused to submit a dispute to arbitration (or to mediation if the respondent's Board requires REALTORS® [principals] to mediate otherwise arbitrable disputes pursuant to Article 17),* the allegation shall be brought before (choose one: the Board of Directors of the State Association or five (5) Directors of the State Association or the State Association's Executive Committee or a Tribunal of five (5) members selected from the State's Professional Standards Committee to be appointed by the President and chosen from the individuals who did not serve on the original arbitration Hearing Panel, etc.). The procedures for notices, time of notices, and hearing prescribed for matters before a Hearing Panel shall apply. The sole question of fact to decide is whether the party has refused to submit an arbitrable matter to arbitration (or to mediation if required). Upon determination that the member has refused to arbitrate or to mediate a properly arbitrable matter, the (specify body — name of tribunal) may direct implementation of appropriate sanction, including suspension or expulsion of the member from the local Board of REALTORS®. The decision of the (specify body — name of tribunal) shall be final and binding and is not subject to further review by the State Association or any Board. *(Adopted 11/11)*

*Requiring REALTORS® (principals) to mediate otherwise arbitrable disputes requires establishment of and affirmative obligation in a Board's governing documents. Enabling bylaw provisions can be found at www.nar.realtor (see NAR *Model Bylaws*)

(9) **Refusal to Pay or Deposit Funds:** In the event a party fails to, within ten (10) days of the date the award is transmitted, either pay the award to the party(ies) named in the award or deposit the funds with the Professional Standards Administrator consistent with Section 53, The Award, *Code of Ethics and Arbitration Manual,* that failure shall be brought before a tribunal comprised of members of the State Association chosen from individuals who did not serve on the original arbitration Hearing Panel. That tribunal may, at its discretion, impose discipline, including but not limited to termination of Board membership and/or MLS access/ use consistent with Section 53, The Award.

Final note: The preceding guidelines do not purport to be detailed provisions for inserting into State Association professional standards procedures as adopted, but are intended to direct certain areas of consideration to the State Association for careful review in its adoption of professional standards procedures, particularly with respect to interboard arbitration conducted by the State Association.

Duty to arbitrate before State Association (Part Ten, Section 46, *Code of Ethics and Arbitration Manual,* NATIONAL ASSOCIATION OF REALTORS®): By becoming and/or remaining a member of this Board (i.e., each local Board), every member binds himself or herself and agrees to submit to arbitration by ✍ the arbitration facilities of the ____________________ (state) Association of REALTORS® any dispute with a member of any other local Board of the _________________________ (state) Association of REALTORS®, provided:

(1) It is a dispute as defined and for which arbitration is required by Article 17 of the Code of Ethics, and

✍ (2) The _________________________ (state) Association of REALTORS® has established facilities for such arbitration.*

In the absence of established procedures and facilities by the ____________________________ (state) Association of REALTORS® for interboard arbitration, disputes requiring arbitration as defined in Article 17 of the Code of Ethics shall be submitted and conducted under the procedure established in **Part Eleven** of this Manual, subject to such modification as may be required by applicable state law.

This method described in **Part Eleven** of this Manual may also be utilized for the conduct of arbitration between Board Members of different Boards of different states, subject to the parties' voluntary agreement in advance to accept the place, date, and time established for a hearing by the arbitration panel chosen in accordance with prescribed procedures, and to pay all costs of such arbitration as may be directed by the panel, and further subject to applicable state law of the respective states regarding binding arbitration.**

*The State Association, as a Member Board of the National Association, has the obligation to establish arbitration procedures and facilities consistent with applicable state law, as required by the *Bylaws*, National Association, Article IV, and by Article 17, Code of Ethics, National Association, for individual members of the State Association.

**Interstate arbitration is subject to many problems of administration and logistics and can be accomplished only if both parties agree voluntarily to such arbitration and agree to pay the required costs. Further, the applicable law of the state in which the arbitration will be held should be carefully considered prior to the arbitration, for this will relate to any necessary judicial enforcement if the nonprevailing party should refuse to pay the award.

Questions and Answers

1. Can the Board of Directors direct a Grievance Committee to always solicit responses in ethics and arbitration proceedings?

No. Only if the Grievance Committee is in need of additional information which the complainant cannot provide pertaining to the questions in Section 19, Grievance Committee's Review of an Ethics Complainant, or Section 42, Grievance Committee's Review and Analysis of a Request for Arbitration, may the Grievance Committee solicit a response. *(Revised 11/15)*

2. A respondent in an ethics hearing has notified the Board that she will be represented by legal counsel. Is it appropriate for her counsel to take an active role in the hearing?

Every party to an ethics or arbitration hearing has the right to be represented by legal counsel. Counsel may take an active role in presenting the opening and closing statements, the party's claim/defense, and the cross-examination of the other party and the other party's witnesses. Regardless of how actively counsel participates in a hearing, it is important to remember that no Realtor® may refuse to answer questions directly put to him or her (though the party may confer with counsel prior to answering), and at no time must a Hearing Panel countenance any attempt by counsel to harass, intimidate, coerce, or confuse the panel or any party to the proceeding.

3. A salesperson is the respondent in an ethics complaint. The respondent asks that his principal broker (who is also a Realtor®) serve as his counsel during the hearing. Is this permitted?

Yes. As used in the *Code of Ethics and Arbitration Manual,* the term "counsel" refers to an attorney at law or to a REALTOR® of the parties' choosing (or both) in an ethics proceeding. However, it would be inappropriate for anyone other than a licensed attorney to act as counsel for a party to an arbitration proceeding.

4. What does NAR recommend with respect to an Professional Standards Administrator's role in ethics and arbitration hearings?

Whether an Professional Standards Administrator attends hearings in an administrative capacity, or participates pursuant to the optional hearing officer policies, is a matter of local discretion. Some Boards and Associations have determined that it is beneficial to have the Professional Standards Administrator present to provide technical assistance and expertise, while other Boards and Associations choose to have one of the panelists (or Board counsel) provide procedural guidance. This is a matter to be determined by each Board and Association depending on, for example, staff resources, staff experience in professional standards matters, hearing panelists' experience relative to procedures and enforcement of the Code of Ethics, the complexity of the issue, and whether or not Board counsel will be present.

5. Our Board is small, and if we are unable to impanel an impartial tribunal of five Directors to consider an appeal, can we refer the appeal to another Board?

No; if a Board is unable to impanel an impartial appeal tribunal, the Board of Directors could refer the matter to the State Association. Refer to Professional Standards Policy Statement #18 in the *Code of Ethics and Arbitration Manual*.

6. How long should our Board retain professional standards records?

The National Association has no policy governing retention of professional standards records. Boards are encouraged to consult legal counsel when determining how long professional standards records should be kept. NAR recommends that the results of an ethics hearing be retained permanently; records relative to the rest of the ethics file should be retained for one year after any discipline has been complied with absent a threat of litigation. In arbitration cases, records should be retained for one year after the award has been paid absent a threat of litigation. Minimally, all professional standards records should be retained until the appeal or procedural review period has expired and it is recommended that the final decision of arbitration Hearing Panels and the Board of Directors relative to ethics proceedings be retained permanently in the respondent's membership file. For more information on document retention see the articles on www.nar.realtor: "Document Retention: What Not to Trash" and "Association Record Retention." *(Revised 11/14)*

7. Can an extension be granted for responses to be submitted to the Board of REALTORS®?

Yes; extensions can be granted as a matter of discretion by the appropriate tribunal.

8. Can an individual who is not a named party attend an ethics or arbitration hearing?

No; attendance at any hearing is limited to the parties and the parties' respective counsel and/or witnesses (witnesses are excused except during their testimony); the Hearing Panel members (including alternates); Board staff and/or counsel, as deemed necessary; and the court reporter, if utilized. In any ethics proceeding, the REALTOR® principal, consistent with **Part Two,** Section 13(d) of the *Code of Ethics and Arbitration Manual* may attend. In any arbitration proceeding, REALTOR® nonprincipals and REALTOR ASSOCIATE®s who have a vested financial interest consistent with **Part Ten,** Section 44(a)(2) of this Manual may also attend.

9. Must our Board grant a postponement each time one is requested? Or, if one party receives a postponement, is the other party automatically entitled to a postponement if requested?

A Board is under no obligation to grant a postponement, much less honor repeated requests for postponement. However, extenuating circumstances should be considered in determining if a requested continuance will be granted. Parties' requests for continuances shall only be granted when all parties mutually agree to a subsequent specified date, or when the hearing panel chair determines that denying the continuance would deny the requestor a fair hearing. *(Revised 11/14)*

10. What is an "arbitrable issue?"

An arbitrable issue is defined as a question arising out of a transaction between parties to a contract (and specific non-contractual disputes as defined in Standard of Practice 17-4). To proceed with arbitration, there must be a dispute between the parties that arises out of a real estate transaction and a disagreement between the parties as to entitlement to a sum of money. See **Part Ten,** Section 43, Arbitrable Issue, of this Manual.

11. Can a mandatory arbitration exist between two cooperating brokers?

Possibly. Refer to Appendices I and II to **Part Ten** of the *Code of Ethics and Arbitration Manual* and Standard of Practice 17-4.

12. A Board has scheduled an arbitration hearing, and the respondent advises the Board that he will not attend the hearing. Can the scheduled hearing proceed?

Arbitration in the absence of a respondent may take place where permitted by state statute or case law. The *Code of Ethics and Arbitration Manual,* in **Part Ten,** Section 48, provides three (3) options addressing the circumstances under which Boards may conduct arbitration. Boards should consult with Board or State Association legal counsel and determine which of these options the Board should adopt.

Additionally, no arbitration hearing may be held in the absence of the complainant, and no award may be rendered without a hearing on the merits.

13. Can a Board, prior to an arbitration hearing being held, hold the disputed funds in its escrow account if voluntarily submitted by the parties?

Yes, but this is a matter of local option. Under no circumstances may a Board require the parties to deposit the funds prior to an arbitration hearing being held. See Professional Standards Policy Statement #8.

14. Can a client request arbitration with a REALTOR® principal?

Yes.

15. Can a REALTOR® principal invoke arbitration if the dispute arose prior to the time the requester became a REALTOR®?

No; refer to the Professional Standards Policy Statement #23, *Code of Ethics and Arbitration Manual.*

16. Who can amend an ethics complaint, and when can it be amended?

Before an ethics complaint is referred to the Professional Standards Committee for hearing, it may be amended either by the complainant or by the Grievance Committee. If the Grievance Committee dismisses an Article(s) cited by the complainant, the complainant may appeal that dismissal to the Board of Directors.

After referral to the Professional Standards Committee, the complaint may be amended by the complainant, including facts upon which the amendments are based. The respondent should then be provided with a copy of the amended complaint and be given an opportunity to file an amended response. *(Revised 5/20)*

An ethics complaint may also be amended by either the complainant, or upon action of the Hearing Panel during the hearing to add previously uncited Articles or additional respondents, including facts upon which the amendments are based. If this occurs, the respondent should be given an opportunity to request a postponement to prepare a response to the amended complaint. *(Revised 5/20)*

Arbitration requests may be amended to add or delete parties only by the complainant or respondent. During its initial review, however, the Grievance Committee may suggest that such amendments be made in order to ensure that all related claims arising out of the same transaction can be resolved at the same time. Refer to Professional Standards Policy Statement #27, *Code of Ethics and Arbitration Manual. (Revised 05/15)*

17. Who can withdraw a complaint, and when can this be done?

Complainants may withdraw their complaints at any time prior to adjournment of the ethics hearing. However, if complainant withdraws the complaint after transmission of the Grievance Committee's decision to forward the complaint to a hearing and prior to adjournment of the ethics hearing, the complainant may not resubmit the complaint on the same matter. If complainant withdraws the complaint before transmission of the Grievance Committee's decision to forward the complaint to a hearing, the complainant may resubmit the complaint on the same matter so long as it is filed within the 180-day filing deadline as defined in this Manual. If a complaint is withdrawn by the complainant after the Grievance Committee determines the complaint requires a hearing, it will be referred back to the Grievance Committee to determine whether a potential violation of the public trust (as defined in Article IV, Section 2 of the National Association's Bylaws) may have occurred. Only where the Grievance Committee determines a potential violation of the public trust may have occurred may the Grievance Committee proceed as the complainant. *(Amended 5/16)*

18. An ethics complaint has been filed with our Board alleging a violation of an MLS regulation. How should we process this complaint?

If the alleged offense is a violation of an MLS rule or regulation and does not involve a charge of unethical conduct or request for arbitration, it may be administratively considered and determined by the Multiple Listing Service Committee, and if a violation is determined, that committee may direct the imposition of a sanction. The recipient of such a sanction, however, may then request a hearing before the Professional Standards Committee within twenty (20) days following receipt of the Multiple Listing Service Committee's decision.

Any alleged violation of an MLS rule or regulation that includes charges of unethical conduct should be forwarded to the Grievance Committee for review and possible referral to the Professional Standards Committee. Refer to Section 7.1, *Handbook on Multiple Listing Policy.*

19. Is there a policy that would allow ethics complaints that involve several REALTORS® to be consolidated into one ethics hearing?

Professional Standards Policy Statement #34 provides:

> *Consolidation of Ethics Complaints Arising Out of the Same Transaction. In the interest of maximizing the resources of Boards and Associations, Grievance Committees should use all reasonable efforts to ensure that all ethics complaints arising out of the same transaction or event are consolidated and scheduled for hearing in a single hearing. Respondents to ethics complaints do not have the right to a separate hearing unless they can demonstrate that consolidation of complaints would prevent them from receiving a fair hearing.*

20. A principal broker has not been named as a respondent in an ethics complaint but wants to attend the hearing in which his sales associate is a respondent. Can he do so?

A principal who is not joined in an ethics complaint as a respondent may be present and participate during the hearing and may even be required by the Hearing Panel to attend the hearing, consistent with the provisions of Section 13(d), *Code of Ethics and Arbitration Manual*. Whether the principal attends the hearing or not, the principal should receive copies of the complaint and response and be provided with notice of hearing. *(Revised 05/18)*

21. Can our Board impose "conditional" discipline? For example, can we stipulate that a respondent be suspended until a fine is paid?

Yes. Although suspension may not be imposed as a sanction for greater than one (1) year (and expulsion for not more than three [3] years), a Board can stipulate that a respondent be suspended (or expelled) until a fine is paid or an educational course is completed. The respondent would be seen as having the "keys to his own cell," meaning that the length of his suspension or expulsion is dependent on his own actions.

22. Does the complainant's REALTOR® principal, if not a co-complainant, have the right to be present during an ethics hearing?

No; only the respondent's REALTOR® principal has the right to attend the ethics hearing (unless the complainant's REALTOR® principal is acting as counsel). Refer to Section 4 and Section 13 of the *Code of Ethics and Arbitration Manual*.

23. A member found in violation has asked for an extension in order to complete the discipline imposed. Can such an extension be granted?

Yes, at the discretion of the Board of Directors.

24. Our Association is considering publication of ethics violations. What do we need to do?

Ensure your Association has adopted one of the two Publication Options described in Policy Statement 45, Publishing the Names of Code of Ethics Violators, *Code of Ethics and Arbitration Manual*. Publication Option #2 builds on the authority provided in Publication Option #1 by authorizing publication in all instances in which violators are disciplined with a letter of reprimand, a fine, a suspension, and/or an expulsion, and by expanding the content of the publication notice. The nature, form, content, and extent of this notice should not exceed what is authorized by the Publication Option adopted by the Association as provided in Policy Statement 45, Publishing the Names of Code of Ethics Violators, *Code of Ethics and Arbitration Manual*. *(Revised 05/18)*

25. A member who is a respondent in an ethics complaint is demanding that the complainant produce certain documents. Can he do so?

No; only a duly authorized tribunal of the Board may require information to be submitted, consistent with Article 14.

26. Can a Board consolidate an ethics complaint and arbitration request filed by the same complainant against the same respondent?

Such an arbitration request and ethics complaint cannot be consolidated in one proceeding, and the member filing them must be so advised. If the complainant still wished to pursue both the arbitration request and the charge of alleged unethical conduct, the two matters must be handled separately. In such cases, the arbitration should be held first to avoid prejudice to the arbitration by reason of any finding as to violation of the Code of Ethics. When the ethics hearing is held at a later time, it should be before a different Hearing Panel and individuals having served on the arbitration panel may not serve on the ethics Hearing Panel.

27. What does the National Association recommend be included in the "Findings of Fact" section of sample form #E-11?

The purpose of the "Findings of Fact" section of Form #E-11 is to provide a clear and concise statement of the facts that led the Hearing Panel to reach its conclusion. For example, the findings of fact for a violation of Article 12 could read as follows: "REALTOR® B was charged with a violation of Article 12. Evidence provided during the hearing showed that his firm had a listing on 123 Pleasant Drive, and that he ran an ad on October 4 for the property which did not disclose the name of his firm. Consequently, the Hearing Panel finds him in violation of Article 12 as interpreted by Standard of Practice 12-5."

Conversely, if a violation was not found, the "Findings of Fact" could read: "REALTOR® B was charged with a violation of Article 12. Evidence provided during the hearing showed that his firm had a listing on 123 Pleasant Drive, and that the advertisement he ran for that property on October 4 disclosed the name of his firm. Consequently, the Hearing Panel finds him not in violation of Article 12 as interpreted by Standard of Practice 12-5."

28. A REALTOR® belongs to Board A only and is a Participant only in Board B's MLS. Can Board A forward the professional standards records of this individual to Board B if the individual has been found in violation of the Code of Ethics at Board B?

Yes, if a REALTOR® is found in violation of the Code of Ethics at one Board, another Board may share that member's professional standards record for progressive disciplinary purposes.

29. If either an ethics complaint or arbitration request is dismissed, in whole or in part, what information should be included in the dismissal notice?

A notice of dismissal shall specify the reason(s) for dismissing (e.g., the matter is not timely filed, or the allegations, if taken as true, do not appear to support a possible violation of the Article(s) cited, or there is no contractual dispute [or specific noncontractual dispute consistent with Standard of Practice 17-4] between the parties named in arbitration). Any notice of dismissal shall also inform the complainant of their opportunity to appeal the dismissal, and should inform the complainant that although the complaint/arbitration request and attachments cannot be revised, modified, or supplemented, the complainant may explain in writing why the complainant disagrees with the conclusion that the matter be dismissed. *(Revised 5/07)*

30. If a REALTOR® principal resigns or otherwise causes his or her REALTOR® membership to terminate and there is a current arbitration request pending against him or her, can a complainant amend an arbitration request to name the new REALTOR® principal?

The new REALTOR® principal may only be required to arbitrate if the new REALTOR® principal was a REALTOR® principal of that firm at the time the dispute arose. The complainant can name any REALTOR® principal of the firm at the time the dispute arose and the arbitration can proceed. If the original respondent simply moved from Company A and re-affiliated as a REALTOR® nonprincipal with Company B, the arbitration could proceed against the original respondent because the duty to arbitrate is personal.

31. Can the sample forms contained in the *Code of Ethics and Arbitration Manual* be amended/changed?

Yes, however, amended forms should not be used until they are first reviewed by counsel to ensure that they conform to state law and to any special requirements established by the Board.

32. If a party appeals an ethics decision or requests procedural review of an arbitration hearing, do they have the right to counsel?

Yes.

33. If a party who has appealed an ethics decision or requested procedural review of an arbitration hearing fails to appear, must the board of directors proceed with the appeal hearing (or procedural review) in the absence of the involved party?

A board may proceed with an ethics appeal or request for procedural review if the party who instituted the appeal (or request for procedural review) fails to appear.

34. If a procedural review (arbitration) is to be conducted and a REALTOR® (non-principal) with a financial interest finds himself or herself unable to attend, must he or she be granted a postponement?

No. While a REALTOR® (non-principal) also has a financial interest in the dispute and who is affiliated with a party to an arbitration hearing has the right to attend the arbitration hearing (and any subsequent procedural review proceeding), he or she is not a party to the proceedings and the proceedings may take place in his or her absence.

35. How should probation be used by a hearing panel that finds a violation of the Code of Ethics?

Probation should be used if a hearing panel wants to hold a form of discipline (e.g., a fine) in abeyance during the probationary period not to exceed one (1) year. Any subsequent finding of a violation of the Code of Ethics during the probationary period may, at the discretion of the Board of Directors, result in the imposition of the suspended discipline. Absent any subsequent finding of a violation during the probationary period, both the probationary status and suspended discipline will be considered fulfilled. Conversely, if the hearing panel wants the respondent to comply with discipline, the hearing panel should not place the respondent on probation. *(Adopted 11/14)*

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NOTE: To find any word or topic, go to www.nar.realtor and search the *Code of Ethics and Arbitration Manual* electronically for fast and comprehensive results.

Case Interpretations online at nar.realtor

NOTE: New and amended Case Interpretations are effective upon approval by the National Association's Professional Standards Committee and publication on www.nar.realtor. Case Intepretations approved by the Professional Standards Committee through 2022 are expected to be published online at nar.realtor no later than January 2023.

NATIONAL ASSOCIATION OF REALTORS®

CODE OF ETHICS & ARBITRATION MANUAL

This Manual is for use by Member Boards to ensure due process in the conduct of hearings to enforce the Code of Ethics and in the resolution of business disputes arising out of the real estate business. Professional standards procedures must reflect substantively the approved due process policies and procedures in this Manual to ensure entitlement to coverage under the National Association's master professional liability insurance program.

For ease of reference, all newly-amended provisions are shaded to highlight additions.

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